

REPORT

OF A TRIAL FOR

ALLEGED MAL-PRACTICE,

AGAINST

DIXI CROSBY, M. D.,

PROFESSOR OF SURGERY, &C., IN THE DARTMOUTH MEDICAL COLLEGE;

IN THE

WINDSOR COUNTY COURT, AT WOODSTOCK,

MAY TERM, 1854.

VERDICT FOR DEFENDANT.

WOODSTOCK:
PRINTED BY LEWIS PRATT, JR.

1854.

REPORT

OF A TRIAL FOR



ALLEGED MAL-PRACTICE,

AGAINST

DIXI CROSBY, M. D.,

Professor of Surgery, &c., in the Dartmouth Medical College;

IN THE

WINDSOR COUNTY COURT, AT WOODSTOCK,

MAY TERM, 1854.

SUSSEX COUNTY LIBRARY.

VERDICT FOR DEFENDANT.

WOODSTOCK:
PRINTED BY LEWIS PRATT, JR.

1854.

NOTE.—The accident from which this suit resulted occurred in the Spring of 1845. By the statute of limitations in Vermont, a suit of this nature outlaws in six years. The writ was not issued until within two days of that time, i. e. the Spring of 1851. The case was delayed in Court until May, 1853. It was then allowed to come to trial, and a jury *found* who rendered a verdict against Dr. Crosby, and assessed damages to the amount of \$800,00 and costs. Dr. Crosby reviewed the case and the following report shows the result of the second trial.

PREFACE.

Several reasons have influenced me in publishing the testimony given in the trial for alleged mal-practice, in Windsor County Court, Vermont. So far as I know, it is the first suit ever brought against a consulting Surgeon, and the first, also, where there has been an attempt to make Counsel answerable for consequences or results over which he did not and could not have any control. This is the only way to bring to the knowledge of the profession the law and its interpretation, which defines the legal connection of physician and patient. To me it has been expensive knowledge—to the medical profession I hope it will be profitable. From the first I have had no doubt but that I should be honorably acquitted. My confidence has arisen from my belief in the honesty of the people, and from a correct public sentiment; and whether this trial ends it or not my confidence is unshaken. The testimony of the medical gentlemen who testified in the case, exhibits a degree of intelligence and fairness highly creditable to their professional attainments, and honorable to their hearts.

To my legal advisers, both on the former and last trial, I am under lasting obligation for their devotion and legal ability.

To the press throughout the United States I am under peculiar obligations for their many flattering notices, both of the suit and myself; the more gratifying to my feelings as they have been unsolicited and unsought.

DIXI CROSBY.

Hanover, N. H., Oct., 1854.

WINDSOR COUNTY COURT,

May Term, 1854.

HON. ROBERT PIERPOINT, *Chief Judge.*

HON. GARDNER WINSLOW, } *Assistant Judges.*

HON. BARNABAS DEANE, }

NORMAN WILLIAMS, *Clerk.*

COUNSEL.

FOR PLAINTIFF.

P. T. WASHBURN,
J. CONVERSE,
J. BARRETT.

FOR DEFENDANT.

P. DILLINGHAM, JR.
E. HUTCHINSON,
O. P. CHANDLER.

JURY.

LORING BEMIS, Plymouth.

JOHN HOWE, JR., Ludlow.

JOHN CHEDEL, Pomfret.

CHARLES HUTCHINSON, Pomfret.

ALPHEUS N. EARL, Plymouth.

SAMUEL H. LEONARD, Pomfret.

HARVEY W. ELLIS, Stockbridge.

JOEL MARSH, Bethel.

CHAPMAN C. FIYNN, Bethel.

OLIVER TARBEL, Cavendish.

MOSES HALL, Plymouth.

SETH CONANT, Pomfret.

TRIAL.

The plaintiff's writ and declaration were read to the jury, in which the defendant is attached to answer to the plaintiff as follows, viz.:

"In a plea of trespass on the case, for that heretofore, to wit, at Norwich aforesaid, on the 12th day of April, A. D. 1845, the plaintiff had suffered and had a fracture of the bone of one of his thighs, which it was proper and necessary should be reduced, set, dressed, and treated for the cure thereof, by a surgeon; and the defendant then was, and for many years had been, a surgeon, and exercising and carrying on and practising the art, mystery and profession of a surgeon, and being so a surgeon as aforesaid, the plaintiff then and there employed the defendant, for a reasonable reward and compensation to be therefor paid to him by the plaintiff, to reduce, set, dress, treat and take care of the said fracture, and the plaintiff thereof to cure; and the defendant then and there accepted said employment, and entered thereupon, and it thereupon became the duty of the defendant to set, dress, treat and take care of the same in a careful and skilful manner. Yet the said defendant so carelessly, negligently and unskilfully behaved and conducted himself in and about reducing, setting, dressing, treating and taking care of said fractured bone, and curing the plaintiff thereof, and performed his operations of reducing and setting said fractured bone, and of applying his dressings thereto, and of treating and managing the same, and treated and managed the plaintiff therefor in so careless, negligent and unskilful a manner, that, for want of due skill and care of defendant, and by and through the negligence, unskilfulness and default of the defendant in that behalf, the said fractured bone was not properly set and dressed, nor properly treated and taken care of, and the same did not unite and join in a due and proper manner, but on the contrary thereof, the fractured ends thereof were suffered to, and did lap by, and upon each other, and so grew and became united, and thereby the said limb of the plaintiff became and is much shortened and otherwise deformed, and lame, sore and weak, and the plaintiff has thereby became and is rendered lame and crippled permanently and for life; and also in applying and continuing the apparatus and dressing for said fractured limb by the defendant, great and needless pain and suffering were caused to and endured by the plaintiff, for a long time, to wit, three months, and also large and painful ulcerations, sores and sloughing of the flesh were caused and produced upon both the legs, feet and ankles of the plaintiff, whereby he suffered needlessly great pain and torture, and was a long time confined and disabled, to wit, one year, and has ever since been and still

is sore and lame and suffering great pain, and has been put to great expense in and about the cure of the same, to wit, three hundred dollars, all which is to the damage of the plaintiff, as he says, the sum of five thousand dollars, for the recovery of which, with just costs, the plaintiff brings suit."

Mr. Converse opened the case for the prosecution as follows:

Perhaps you may be better able to understand the application of the testimony if I make a statement of what we expect to prove. In the first place, gentlemen, we shall attempt to prove that Mr. Slack was at work for a railroad company or on some highway; that there was a bank of earth that fell upon him, and this was on the 12th day of April, 1845, if I do not misrecollect; that the bank of earth overwhelmed him and covered him up entirely. He was, however, removed and taken to a neighboring house, Mr. Estabrook's. Physicians were immediately called and among others Dr. Crosby. We shall show to you that Dr. Crosby at that time was a little unwell, and that when the messenger went to his office he said he was very ill, but Dr. Brown, a neighboring physician, was supplied, went over and there saw Dr. Davis. They made an examination of Mr. Slack, and found him injured and one of his legs broken. They thought it advisable to go and consult Dr. Crosby. They did so, and the doctor concluded to ride over and I believe went over that night. Conversation was had among the surgeons about the treatment, and what splint or apparatus to be applied. Dr. Crosby recommended a certain kind of apparatus called Gibson's Splint. [Here Mr. C. exhibited a drawing of the apparatus and gave a description of it.] We expect to show to you, gentlemen, that that was the kind of dressing recommended by Dr. Crosby, and fell in with by the other surgeons as a matter of course, if recommended by him; that the Dr. went over the next morning, this being Saturday evening, a mechanic being employed in manufacturing the instrument. He went over the next morning and first directed some alteration which the mechanic made; he (Mr. Slack) was put in the splint I described, by Dr. Crosby; his feet and ankles soon became very much ulcerated so that he could get no rest. Both feet were in that situation, as I am told, for twenty days; then they became so bad that they released the foot of the well leg, still they let the other remain until it became insufferable. Then it was, after some thirty odd days, Mr. Slack being desirous to go home to his own house, was taken by some of the neighbors and carried home.

That it will appear to you, gentlemen, I believe, from the testimony, that his feet and ankles were so badly ulcerated that,—I am not a medical man and cannot give any technical name,—but the heel came off, and, in short, so bad that he could not bear the pressure any longer without severe torture. The result has been, gentlemen, that Mr. Slack has got able to be about, but that limb is from two and a half to three inches shorter than the other, and now there are still ulcers on the feet which are most of the time troublesome. We will satisfy you that before this accident Mr. Slack was a man of uncommon health and constitution. No man was able to perform more labor than he. Since then he has been able to do but little labor, and probably will always remain thus.

Mr. Chandler opened the case for defence as follows:

We expect, gentlemen, to prove that, after the accident to Mr. Slack happened, Dr. Crosby was applied to by some messenger who went of his own accord; that the Dr. at the time was unwell and not in a condition to go out; but a physician in the neighborhood, Dr. Brown, happened at that time to be in the doctor's office, and it was suggested that he could go; whereupon the messenger requested him to go; that Dr. Brown went to Mr. Estabrook's, where Mr. Slack had been removed, and there found Dr. Davis; that Dr. Davis was the family physician of Mr. Slack, and was at that time treating a case in his family, and was a family connection; that Drs. Brown and Davis made an examination of Mr. Slack and endeavored to ascertain the nature of the fracture, and they came to the result that it was a fracture which the physicians term a "double fracture of the thigh bone," and perhaps a compound fracture. To adopt our own language, the bone near the thigh was broken in two places,—one near the neck of the thigh, and the other a few inches below, where two important muscles come into this part of the body. That this was broken in such a manner that the bone very nearly protruded through the skin, and the enquiry was what should be done? They had no proper appliances, such as splint, &c., and they concluded to go to Dr. Crosby's office and consult him, and, if they could, obtain the necessary appliances. They went, and the question arose there as to what kind of splint was best adapted to this case. They examined a book and plate of a splint of Dr. Gibson of Philadelphia. They found in this book, which is of standard authority and fully relied upon by the profession, a plate of a splint. They examined and con-

sidered the matter, and all three of them came to the conclusion that it was the best splint to be adopted in this case. That Drs. Brown and Davis returned to Estabrook's, after importuning Dr. Crosby, if possible, to come over and consult with them. He did so, and it appeared when they made the examination that it was not thought practicable to put the patient on the splint at that time. When Dr. Crosby was about to leave, these physicians entreated him to return the next day and assist in putting the patient on the splint. They applied to some mechanic, who made a splint conformable to the one laid down in the book. On the next day, all three physicians being present, Mr. Slack was put into the splint in all respects prepared to remain in the splint in such a manner as was laid down in the work referred to. In respect to the splint, gentlemen, we expect it will appear from testimony of men of established authority, whose depositions we shall present to you, that it was fully and properly applicable to the case. We expect it will appear to you from the testimony of physicians, that it is proper that a physician shall select such a splint as he thinks most applicable.

We expect to make it appear to you that it is a practice among physicians and surgeons, that persons who are under treatment for fractured limbs like this, should not be removed from the splint within a certain time after being placed on it. But in a much shorter time, contrary to the advice of Dr. Davis, the friends of Mr. Slack took him off of the splint and carried him on their shoulders to his home, a distance of three miles. We shall prove that, at the time he was taken off of the splint he was doing well. We shall prove in relation to the sores,—not precisely the time when they first appeared,—but that, while under treatment at the house of Estabrook, Mr. Slack refused to allow the proper appliances to remain, and that he was in the constant practice of having his foot and ankle wet. This might be the cause of his feet becoming sore. We expect to show, that when Dr. Crosby was applied to, it was only to assist these other physicians in putting him upon the splint, and that he never was applied to afterwards; that Mr. Slack never expected his services afterwards; that Dr. Davis was the family physician, and did remain in attendance with the approbation of Mr. Slack himself; and that Dr. Crosby had nothing to do with the case, whatever, after he assisted in putting Mr. Slack on the splint. And we affirm that, whatever the after treatment might be, it should not be chargeable to Dr. Crosby.

TESTIMONY FOR PLAINTIFF.

E. M. LEWIS, *called*. On the 12th day of April, 1843, there was an alarm that Mr. Slack was buried in the sand. I went up to the gulf, some 50 rods from the house. They had just dug him out. He was, I think, doing a job there for the town. I was requested to go for a doctor. Got one of my horses and went over to Hanover, saw Dr. Crosby, found him out of health. Told him Mr. Slack had got hurt and wanted he should go over immediately. He said he must be excused for he was sick and just getting about, and could not possibly go. The accident happened about 50 rods from Hanover bridge. Dr. Crosby lived a little over half a mile from the bridge. Dr. Crosby said he would send Dr. Brown over. When I got back to Estabrook's, I think I found Dr. Davis there. Should think Estabrook lived some twenty rods from the bridge. They were just carrying Mr. Slack into the house as I got back. Dr. Brown came over, and after a while Drs. Brown and Davis talked the matter over, and thought it a critical case, and they thought they would go for Dr. Crosby. I recollect Dr. Davis said "if one could not fetch him two could." They went for him and he came over, I should think in the course of an hour. I saw him. I believe something was said about a splint, but cannot recollect what. I was there frequently during the sickness of Slack. Think I was in the next day. I was not in the room when Mr. Slack was put upon the splint. The first time I saw him afterwards his feet were elevated higher than his head, and I believe lashed up with gaiters. Did not examine them closely. In January 1849, I think it was, I had some conversation with Dr. Crosby. I had before heard Mr. Freeman, Dr. Crosby's agent, request pay from Mr. Slack, and he refused to pay anything. In the conversation I had with Dr. Crosby I told him that Slack said he never would pay unless upon the tail end of an execution. That Mr. Slack was very much excited about it, and asked why he didn't sue him. I told Dr. Crosby that if he rendered him services he would pay, for Slack was good for it. Dr. Crosby said he considered him ungenerous and an unreasonable man, but that the time that would be expended in collecting it might be applied to better purposes; and said that, if he did not stop circulating erroneous reports, he would not only collect the bill but make him suffer for slandering him. I think I saw the bill; I believe the bill was for attending on Slack. Don't know how

much it was. I think it was light. My impression is that it was for more than one visit, but cannot say as to that or its amount.

Cross examination. I think I went to Dr. Crosby's office by request. Mr. Slack did not ask me to go, he looked like a dead man. They told me to go for Dr. Crosby. Took out my horse, did not use a saddle. Presume some one started for Dr. Davis, but do not know. Dr. Davis lives a little more than a mile and Dr. Crosby little more than half a mile from the gate. Think Dr. Davis married Mr. Slack's sister. When I went to Dr. Crosby's office I told him I wanted him to ride over for Mr. Slack was injured. Dr. Crosby looked as though he was in feeble health, and not like a man who had been lately out or soon to go out. He said Dr. Brown was there and he would send him over immediately. Do not recollect of seeing Dr. Brown. Do not think I went in.

JAMES S. CURRIER, *called.* Lived in 1845 at Norwich, a mile from Hanover Bridge. Sunday morning I started for Hanover. Mr. Slack's brother William, who is dead now, overtook me. Rode down with him. I saw him then. It was the first time I saw him after he was hurt. Soon after I got there Dr. Crosby came into the house. This splint was brought in from the shop room, as it was so called. Could not say by whom it was brought in. Mr. Slack was fixed to have the splint put under him. One or two persons tried to draw the gaiters up to the spot to be fastened. They did not appear to have strength enough to do it, and I was called upon by Dr. Crosby to do it. The Dr. turned round to me and said: "You are strong." He wished to have me help draw the gaiters up. I did so, and held them until they were fastened. There was a cord or string through the bottom of the gaiters. [Witness explained the apparatus used, by a plan.] Drew both feet up till my arms ached. The gaiters covered his feet all over. They were made of canvas, I think. Think there were holes in the upper board of the splint. Don't know who made the splint, supposed it was Estabrook. Saw the gaiters put on. They fastened to the feet and all over the bottom. Could not tell whether they were laced or sewed up. Could not say as they extended above the ankle. Dr. Davis, Geo. C. Hutchinson and Mr. Estabrook were present. Mr. E. was a joiner. Should not dare say any others were present but Dr. Crosby, unless Mr. Slack's brother was there. Dr. C. is all I know of who directed placing Mr. S. in the splint. Think I remained there an hour or an hour and a half. I left before Dr. C.

did. He overtook me just above the toll gate on Hanover side. I asked him if he thought Mr. S. would live; he said he could tell better in a day or two; think this was his answer. He thought he would get along if he was not hurt inwardly. He gave me to understand that he could not tell until twenty-four hours had elapsed. Could not tell whether I asked him or he asked me about the splint. He said he had never tried it before. He said it was just the thing for such a man as Slack was. He said Slack was a stout man and the splint was stout too.

Cross examination. When I had conversation with Mr. C. he said he thought there was an even chance for Mr. Slack to get well. I asked him if he didn't think Mr. S. made more touse about it than other folks would. I told him I would not make such a fuss. Understood him to say the kind of splint was applicable to the fracture Mr. S. had. He didn't say that it would not be applicable to a weak man. Think I did not testify at the last trial about its being applicable to a stout man. When I had the conversation with Dr. C., I told him that whenever he, Slack, got hurt, when he was a lad, he made more touse about it than the other boys. Do not feel any interest about this case. Believe Mr. Dudley wanted me to make a bet about it; told him I was a witness in the case. Don't know but I said I would not be afraid to bet if I was not a witness. Dr. Davis was present when we put Mr. S. on the splint. Don't remember about his putting on the gaiters. Do not know as I applied more force than was necessary; I applied enough to raise the feet to the foot-board, and no more than was necessary to hold them there.

By Mr. Converse. Mr. Dudley lives at Hanover. Think I applied equal strength to both feet.

GEORGE C. HUTCHINSON, *called*. Resided at the time of this accident at Norwich Plain. Was down to Mr. Estabrook's Sunday morning. Found Mr. Slack taking on pretty bad. Assisted in putting him in the splint. Mr. Currier, William Slack, Drs. Davis and Crosby were present. Saw a splint there which they were going to use. They said Mr. Estabrook made it. Never saw one before. Dr. Crosby I think came into the room with gaiters in his hand, and spoke to one of us. Dr. Crosby said the splint was a new thing to him and he never had used one before, but that Mr. Slack was a good subject for it and he meant to give it a trial. He said he was a strong man, and he thought a good one for that instrument. When

it was carried into the other room, I went in and assisted in putting Slack into it. Saw the gaiters put on. Dr. Crosby spoke to Mr. Currier and asked him to take hold, as he was the strongest man in the room, and assist them.

Cross examination. Think Dr. Davis put on one gaiter and Dr. Crosby the other. Think Mr. Currier had hold of both legs. Think he reached over the board and had hold of the feet.

By Mr. Converse. Some one, I think, tried to draw up the feet before Mr. Currier was called upon, but cannot tell who it was.

MRS. OLIVE BLAISDELL, *called.* Heard Drs. Crosby and Davis talking together at our house about two weeks after Mr. Slack was hurt. They were speaking as to how uneasy Slack was. Dr. Crosby said that he was of a very strong constitution, and was a very good subject to try an experiment upon.

Cross examination. Davis came to the house before Crosby. Dr. D. was doctoring my husband,—I was out and in to the room. This was all I heard. Think it was Dr. Crosby who spoke first about Slack's being restless. Spoke about this conversation about a year ago at the house of Charles Hatch. Do not know as I have said any thing about it since. Don't know but I have mentioned it to some one with Mr. Hatch. Spoke about it to Mr. Slack. He came to me to know what I knew about it. It was three or four weeks ago. Don't expect I heard all the conversation between them. Don't recollect about their saying anything about the propriety of adopting the splint. Did not testify before in this case. Geo. C. Hutchinson is a cousin of mine.

GEORGE SLACK, *called.* Am a brother of Lorenzo Slack. Saw him just after he was carried into Mr. Estabrook's. Stayed but a short time. Saw him again Sunday morning. Cannot tell the exact time of arriving, perhaps as late as eight o'clock. It was before he was put on the splint. Saw Dr. Crosby there. Cannot tell whether he arrived first or not. Cannot recollect whether I saw Dr. Crosby there the night before. Did not see my brother put into the splint. Went out on the bridge. Thought it would be rather a painful operation, and didn't like to see it. Saw him immediately after he was put into the splint. Mr. Estabrook made it. He was at work on it Sabbath morning when I got there. The question was asked how long he would have to lay there. Think Dr. Crosby told the number of days, but cannot remember how many. My brother asked him

when he might begin to count. He said, "you may begin today." Think Dr. Crosby said in so many days he would get out with a good leg. Watched with my brother five nights at Estabrook's. Should not think the first time I watched with him was more than a week after he was hurt. Think it was a week from the day he was put into the splint. He didn't rest any the first night I watched with him. He complained of pain in his feet and ankles, and well leg; but not at the place where the limb was broken. He complained of heat and burning in his feet and ankles. There were holes cut in the gaiters for his ankle bones. Do not know whether they were cut on the top of the instep or not. One night I remember more particularly, the pain seemed to be in his well leg. Mr. Daniel Currier watched with me that night. We had heated flannels and a free-stone, and wrapped the flannels round his leg, and held them as hot as we could. Could not tell whether this was the first night or not. Think it was not. Was with him frequently during the day. Can not tell at what time he was removed, or how short a time it was after I watched. I watched with him at other times. He complained every time of pain in his feet and ankles. Saw his ankles were sore. Think the second time I watched with him the pain was in his limb. Cannot remember how soon it was I watched with him the second time. Cannot tell what time he was removed but think it was the first of June or the last of May. Saw him when they got along by my house. They had to pass my house in going from Estabrook's to Slack's house. Should think it was three miles and a half from his house to Estabrook's. He was carried on a sort of litter, on men's shoulders. It resembled a bier. Went with them from my house to his. Did not remain there a great while after they got him home. Staid till after the rest went away, and till they got supper. Cannot remember the state of his feet or ankles at that time. When I watched there, thin matter ran from his heels. Cannot tell how long it was before he got out of doors, but when he got out he was pretty feeble, and went on crutches until Fall or Winter. Think he used a cane after that all winter. Have seen the feet and ankles occasionally; have seen them today; every time I saw them there were sores on the heel. Brother's health was remarkably good before the accident; never knew him to be sick a day before he was hurt; think I heard him say once he had the headache. He was more than a middling man for labor; can do a pretty good day's

work now, but not as much as before he was hurt. At the time I applied warm flannels the pain continued all night.

Cross examination. Think I made use of the same terms when I testified before of what Dr. Crosby said about the number of days my brother would have to remain in the splint. I think I watched with brother for the first time a week from the Sunday after he was hurt; never took his feet out of his gaiters; have sometimes loosened them four or five times in a night; do not recollect of loosening the fastenings of the footboard more than once or twice; cannot tell how often I loosened the cords. Have bathed the feet with a preparation; supposed it to be rum and water; do not know as Dr. Davis told me his feet should not be wet; don't know as I saw Dr. Davis there excepting when they put on the splint. He attended my brother after he was put into the splint, while at Estabrook's; don't know as he was the family physician; do not know as he attended a sick child there; he is a brother-in-law of mine. After he was moved home, don't think there was any splint. Don't remember whether left on litter, or taken off and put upon a bed. Have seen him sitting in a chair, (got by Dr. Davis' directions,) at home. When I examined his heel today there was a hole in it as large as a small pea; that was all the sore there was. He had a sled run over his foot a year ago last winter; think it run across his toes. He said he was going to get on his sled and slipped. Don't recollect about having his leg reset after being removed home; supposed he used ardent spirits before being hurt; he had spirits in haying time, and occasionally at other times. He generally kept some by him. He drank weak sling with cracker in it twice or three times a night, when I watched with him; did not drink any thing else.

By Mr. Converse. Never saw my brother when I thought he had drank too much; have drank spirit with him and don't know as he takes any larger portion than people who call themselves temperate. I always drink when I can get it. His foot never varied from its place when I watched with him; suffered it to be released five minutes at a time; He would beg to have it loosened, and I would loosen it as little as possible, and have sometimes pretended to untie the strings when I did not. The folks said Dr. Davis said it must not be untied.

The following minutes of the testimony of J. D. Hilton, at the last trial, were admitted and read by the Judge:

I made the gaiters; never made any before; made them, I should think, under Dr. Crosby's directions; I was sent for on Saturday; Dr. Crosby and Dr. Davis came to the door with the book, and showed me how to make the gaiters. I made them and carried them on Sunday to Estabrook's; gave them to Crosby. He said they would answer. I saw plaintiff after he was in the splint a number of times; he had on both gaiters; they were made of strong canvas, lined with white sheepskin; saw plaintiff at one time,—his heel was sore.

JAMES BURNHAM, *sworn.* Saw Slack first on Monday after the accident; the Tuesday night following, I watched with him; he was very uneasy; he complained of pain about his feet and ankles; didn't complain of pain in the thigh; he said the other pain was so much greater he didn't mind that; both feet were in the same position. In about a week, I watched with him again; he was in much pain in his feet and ankles; they were considerably swollen and inflamed. Saw them several times; a considerable part of the time there were on them eruptions and sores; the first were about the ankle joint and round the instep. Could not tell whether there were running sores before they were taken off of the board. Was present at the time he was removed; his feet and ankles were very sore at that time. Think I watched with him six or seven times when he was at Estabrook's; he grew worse every time I saw him; assisted in carrying him home.

Q. Where did you say he grew worse? A. The sores were worse, that is what I meant. Have been acquainted with Slack about twelve years. His health and ability to labor before his injury were uncommonly good. Don't know how often I saw him at his house. Called at every opportunity. The first time I watched with him after he was carried home, he was lying with his feet over the foot of the bed, and the matter was dripping off on to the floor. Saw a piece of the heel the day after it came off; perhaps it was half as big as a hen's egg; it was black. Don't know as I can tell how long it was before he got out. Know his ankles and heels were sore some time; have seen them occasionally since; perhaps it is a year and a half since I have seen them; have always been sores on his heels when I saw them. Ankles healed up. Well leg was released before he was carried from Estabrook's. Can't tell how long; it runs in my mind it was a week or ten days before. Think it was not far from the middle of May when he was moved home.

Cross examined. Released his legs frequently, perhaps once or

twice a night; think I may have loosened the straps at the footboard occasionally; some nights have done it often, and sometimes not more than once or twice; untied them to let there be a chance to relieve the pain; left them so a minute or two, and then drew them up. Don't know about the directions of Dr. Davis only by those who had taken care of my brother. They said that they might be released occasionally to relieve the pain. Do not recollect what the shortening of the limb was at the time he was taken out of the splint, but it was stated it was shorter; assisted Dr. Davis in measuring after he was carried home, and he said there was no difference between the measurement then and before he was moved. Did not help measure it before he got home; didn't see it measured then. I asked the doctor for certain reasons, if it had injured him to carry him home; one reason why I asked him was because there were objections made to his being taken home. Dr. Davis objected; he said he ought not to be removed that day, but might be the next; asked him what difference a day would make. Don't recollect what reasons he assigned. Don't recollect about his saying he would not take any responsibility if he should be removed; did not hear him say if we removed him at all it shouldn't be while he was there. I went there before Dr. Davis; did not hear all the conversation the doctor had in regard to that subject; cannot tell by whose suggestion it was concluded to move him; did not hear any of the neighbors say they would go down and move him at any rate; knew Dr. Davis went away and staid a short time, and it was said by some one that he had gone away and did not like to have Slack moved. At the time I saw the sores I was speaking of when I removed the fastenings, I could see them without taking the gaiters off; holes were cut in them over the sores; could not tell at what time the holes were cut. Am well acquainted with Slack; live within about half a mile of him; could not tell what his habits of drinking ardent spirits were. He is a man who has used ardent spirits occasionally; when I watched with him, my impression is that he occasionally had some sling with cracker in it. There was a pulley to lift his great toe, and something to draw his heel up off the board to rest it. Think there was nothing between the board and heel at first. Think there was something tucked under in some way to relieve him; never saw any thing under the soles of the feet; could not say as any thing was put under the limb on the inclined board; never saw any bands placed from the knee to the foot-board. The

pulley was fixed so that Mr. Slack could raise his foot up and down as often as he pleased ; do not know how often he did this ; know nothing of his leg being broken up and re-set after he was moved home ; nor of any treatment being applied in consequence of the want of adhesion ; watched with him in about a week after he was moved home, and about once a week afterwards ; never saw his leg measured but once, which was after and the same day that he got home.

Dr. SHUBEL CONVERSE, *called*. I reside at Norwich ; have practised as a surgeon and physician 20 years ; resided at Norwich 17 years. Acquainted with defendant. He is also a professed surgeon and physician. I saw the plaintiff some three or four days after the injury, in the fore part of the week ; might have been Monday or Tuesday. I was passing to or from Hanover. Met Dr. Crosby near the bridge, and went in with him to see Mr. Slack ; don't know as at any body's request. Some conversation occurred between us about plaintiff's injury ; whether Dr. Crosby asked me to go in, cannot say. We went in together. I had no care of him at that time. I found him upon a splint, called the inclined plane ; Gibson's splint ; both legs elevated. Consisted of three pieces of board, &c. (Witness here describes the splint.) Inclined part extending from within 8 or 10 inches of the end of the upright part to towards the end of the horizontal part. Not able to tell the angle ; should *think* from 30 to 35 degrees. As far as I know, this has not been in common use in this section. Never knew it used in this section before. Splints generally used here are the straight splint and the double inclined plane. (See Plates 4 and 5, on next page.) I believe it is generally considered that the double inclined plane is better adapted to fractures of the upper third of the thigh. Straight splints are generally used for fractures below the upper third. Do not know what splints defendant was in the habit of using for fractures at that point. He once assisted me in a fracture of the thigh at the neck, and that was treated upon a straight splint. I did not satisfy myself at all, made no examination, as to the point or nature of the fracture. Location was pointed out to me by Dr. Crosby at that time ; it was at the lower end of the upper third. I was satisfied it was an oblique fracture, from the fact that the limb had a tendency to shorten. I don't know any thing about, and Dr. Crosby did not inform me, whether it was a simple or double fracture ; I have never made examination to satisfy myself about it. I have treated fractures of the thigh somewhat. I have

used the straight splint and the double inclined plane. The place pointed out by the defendant was not as favorable for cure as lower down; should consider it quite as favorable as one higher up. The splint used on plaintiff I know nothing about from experience, at all; I had before seen it described in Gibson's Surgery; I am not prepared to state the advantages or disadvantages of this splint,—never used it. The position being elevated, of this splint, was favorable to Slack's case,—the same as in the double inclined plane. Were I to give my opinion as to its disadvantages, should say it would be rather more difficult to make and keep extension on this than on the straight splint, or double inclined plane. I imagined that *might* be the case; it is mere matter of opinion. Very important to use a splint that the patient can be continued on a sufficient length of time, and one that would be the most comfortable to the patient. Extension is important from the time of injury to the time of cure. Think it *most* important to be kept up from the fifteenth to the fiftieth day of the fracture.

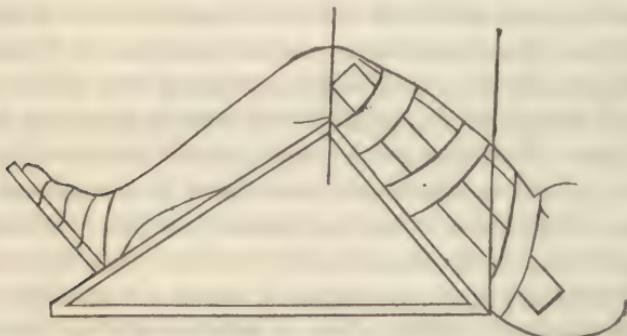


Plate No. 4: The Double Inclined Plane.

The splints and bandages around the thigh, necessary in the double inclined plane, could not have been used on account of the swelling and tumor described by Drs. Brown and Davis. [See Plate No. 1.]

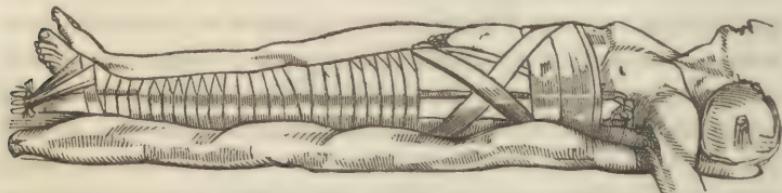


Plate No. 5: The Straight Splint.

The same objections hold good of this Splint as of the last, besides the disadvantage of position. [See Plate No. 2.]

Of the utmost importance to use such apparatus, that the point of pressure can be shifted ; it might be done and the ankles relieved on Gibson's splint, by adhesive strips. When I saw it at Estabrook's, extension was made by gaiters at the ankles. Pressure might be relieved or changed by bands just below or just above the knee on this splint; circulation, if muscles were strong, might be some obstructed ; I think pressure might be divided at many more points on a straight splint than on this ; it would be rather more difficult on this, as it strikes me. The only difference I see between the double inclined and the single inclined plane is, that in the former, only one limb is confined, and in the latter both, and I think it might require a little more power to produce the same extension on the single inclined plane ; the weight of the limb must be overcome before the extension can be made ; think the extension force can be more easily distributed in the double inclined plane. The object of extension is to overcome the tendency of muscles to contract ; bending the limb would have a tendency to relax one set of muscles and render more tense the other set. No great difference between double inclined and this, as to making the pressure uniform. I saw the plaintiff about the middle of June following at his own house ; I was passing, and was called in. He called my attention to his ulcers ; I found he was under the care of another physician, and I declined to do any thing at that time ; found him sitting in a chair, his limbs hanging, very much swollen ; very bad ulcers upon his feet and ankles ; ulcers on the foot of the fractured limb were worse than on the other ; there were four upon the foot of the broken limb, (one upon the heel, one at the instep, and on each side of the ankles;) whole surface of the heel was involved in ulcers ; portion of large tendon of the heel was exposed ; lower end of the tendon appeared to be ragged, hanging by strings, with dark appearance, *sloughing stage*, (meaning separation, or throwing off of the dead from living matter.) I saw Mr. Slack occasionally after the 18th of June, when he fell under my care, until the 1st of August. Swelling subsided ; appearance of ulcers gradually improved. When I first saw him at home, I should think it extremely difficult for him to bear any extension whatever ; he appeared to be feverish ; fever, I concluded, in consequence of the sores upon his feet ; in a very irritable condition. I made something of an examination, and satisfied myself that union had taken place, to some extent ; but to what extent, I could not tell. Have been acquainted with the plaintiff 17

years; his health was uniformly good, as far as I knew, till this time; I did not visit him after August; don't know how long before he got out. He has shown me his heel a number of times since; he did so but a short time since; the heel appears to be gone, or part of it—the prominent part that extends back; the sore upon the heel appears to be permanent; it may get well, it may continue longer; it is an open ulcer; it discharges; it is my opinion, and has been, that the bone, a small part of it, is dead, and the ulcer is kept up by that; it must be a very small piece, if any, and may pass off and the ulcer heal; sometimes have ulcers upon feet very difficult to cure, owing to the constitution, nothing to do with the bone. Think the heel of the well leg is cured; have not seen it.

Shortening of the limb, at the time of the confinement with ulcers, I measured once or twice, and my conclusion was, that the shortening was 2 3-4 inches; should consider it a permanent damage to him; much more difficult to walk about than if of natural length; think the motion of the ankle joint on the injured limb is somewhat injured by the injury to the heel; he would be liable to suffer some pain from it, particularly from this ulcer. I have heretofore been occasionally the family physician of the plaintiff, and I think before this accident. I got the impression that it was a simple oblique fracture; can't say Dr. Crosby told me so; I made no examination.

Cross examination. Only went in to see plaintiff with Dr. Crosby. Dr. Crosby and I are on better terms than I and Dr. Davis.

[Asked the witness what the rule is among surgeons and physicians in that vicinity, and as established by the state and county medical societies, as to any obligation of a surgeon so called to consult and render temporary assistance, and then the patient is left in the care of an attending family physician, to render any further assistance. Objected to, and excluded by the Court. Defendant excepts.]

The rule is among physicians and surgeons to adopt such splint as the one called thinks the occasion requires; may make alterations in those already in use, or adopt one of their own. One would adopt one splint; another, another splint, in the same case. If called, I should have been a little more apt to have adopted the double inclined splint, for the reason that I have never tried Gibson's; the double inclined not very recent; think not as early adopted as the straight splint; more force is required to get extension when the fracture is high up on the thigh,—the muscles stronger. There are two large

muscles inserted into the *trochanter minor*. [Witness takes the thigh bone of the left thigh and explains.] Muscles are to draw the thigh up; the tendency of these muscles is to draw the point of fracture up; in many cases, and in such a fracture as the plaintiff's, it is important to raise the limb to overcome that force of muscles. No rule as to angle; may be different, may be the same angle, in both; angle should be regulated properly. Discovered no elevation in plaintiff's case but what was necessary. In the double inclined splint there would be more danger of excoriation and inflammation at the knee, and stiffness of the knee joint; no case ever came under my observation where it occurred at that point. As far as my observation extends, there is no difference as to stiffness of the knee between the two. Might make more powerful extension with the straight splint; as to *certainty*, cannot conceive much difference. The *pelvis* is not confined in either kind. The double inclined plane would admit of appliances to fasten the body. I use such. More easy to get extension on straight horizontal than on double inclined; the same, if the leg is brought up, with the exception of the weight of the limb. I cannot say with any *certainty* that one splint would be preferable to the other, only as the patient might be better able to bear one than the other. In case of double, comminuted, compound fracture, with great laceration of the soft parts, there might be advantages in adopting Gibson's, and might be disadvantages; would not do to fasten at the thigh,—must be at the feet, or some other lower portion of the limb. Don't see why it is not as easy to keep on the double as the single. Must be kept in place on the double by bolsters to keep from rolling. I have used a double, with a transverse piece, of perhaps a foot and a half in length, resting upon the bed near the foot, to steady it. There are Goodwin's and Rowe's double splints. I use Rowe's. Transverse piece may not be more than 8 or 10 inches long; physicians may alter; I have made longer ones. I adopt such variations of splint as I think best. There is difference of opinion; some think it important to secure both limbs; others, not; some recommend securing both limbs in a horizontal splint. Relieving limb may be made on Gibson's by moving the body, by paddings put in, by bandages about the limbs, and by loosening the cords. With reasonable care by the attending physician, I suppose the patient might be relieved in Gibson's splint. Frequently excoriations about the feet occur to a certain degree, when there has to be great force for extension. In

1845, sticking-plasters were not known or used. Since that time collodion, or gun-cotton, is applied to avoid excoriations,—not then known or used. Then it was customary to get extension from the foot by means of gaiters, for first application even up to the present time. Pain is usually found at the place where power is applied to the limb; greatest suffering is at the feet and ankles; it is common to have pain about the hip and in the well limb; it is unavoidable. Frequent wetting of bandages would be more apt to produce inflammation and excoriation; they become harder; tends to soften and endanger the coming off of the hard parts of the heel. Excoriations of the heels and ankles I should think are owing more to other circumstances than to the splint. It would make no difference whether wet with rum, or rum and water. Always in setting and putting into the splint, it is necessary to use force enough to make proper extension. I never considered it safe to allow watchers or attendants to loosen gaiters, or at the foot-board; had rather do it myself. The practice of watchers and attendants to take off extensions, I should not consider safe at all; its effect would be to retard recovery. With such practices, or if there are any displacements, it would require longer time. I consider there is *no reasonable probability* that limb could be let down by attendants without derangement or displacement of limb. Should it turn out a double oblique fracture with laceration, and what I know of Slack's case, I should consider from 60 to 80 days confinement to the splint necessary. Should think it quite unsafe to remove the splint at the end of 31 days, and not put it on again; the effect would be the probability of shortening and curvature. The effect of taking the ankles out and letting them hang down, at the end of 31 days, would be to increase inflammation of the ankles, &c. When the well leg had been kept up till that time and then let down, it would have a similar effect upon the ankle of that limb; swelling, at least. Chance of recovery would be affected by the habits of the patient. It is considered that those in the habitual use of ardent spirits are unfavorable subjects for treatment of fractures, or any other inflammation that may arise; ulceration is more likely to accrue. The effect of drinking sling and crackers two or three times in a night, the first 30 days, during the stage of inflammation, I should think would have a very bad effect. Inflammation would be the greatest for the first two weeks. Previous to my attending the plaintiff, I understood from him that Dr. Davis had been attending upon him. It is the duty of the

attending physician to attend to the feet and care of the patient. I cannot tell whether I have practised more in plaintiff's family before or since the injury.

[Offer to prove witness' practice as to continuing visits when called for special occasions. Objected to and excluded. Exceptions.]

When I saw plaintiff there was padding, or a cushion; board was covered; also heels covered by gaiters. Do not remember whether padding under gaiters. Sure limb did not rest upon board.

Re-examination. Don't recollect about it, but rather my impression that I was asked in by defendant. I never went to see a patient without an invitation. Object of applying splint is to overcome contraction of muscles and keep fractured limb in proper place. This is the object of all splints. Gibson's splint has been known to the profession twenty-five years; perhaps more. To get proper extension, would not be necessary to change the splint, but apply more force in fractures of the thigh. In double, facilities for changing angle; may be varied at pleasure. (Model of Goodwin's kind is exhibited.) Principles of others, same. Sometimes necessary to change angle, or desirable and convenient to patient to do it. I think it can safely be changed on Gibson's splint by one accustomed to it—a physician. Don't know as there would be any difference between Gibson's and double, as to power of extension. Necessary, sometimes, to change degree of power. If bent at knee it relieves so much at ankle. Only advantage in Gibson's, there is a vessel to receive the discharges from the patient—both sides of pelvis being raised—that may be an advantage over the double. Don't know as I can conceive any other advantage. Cannot be applied to other splints, unless both limbs were elevated. Might be if raised with hand, but not without a little risk of displacement; think it may be so done. Excoriations are usual, but never saw any like these before. As patient was when I saw him about the middle of June, consider it wholly impracticable to apply any extension at all. Force is often found necessary to be changed from the ankle. I had the impression it was a simple fracture. I don't know anything why plaintiff is not a temperate man. Should think some impropriety in administering sling in inflammatory stage; not in habit of prescribing it in cases of fracture; not improper in case of exhaustion, after active inflammatory stage is passed by. That would usually be in two weeks, on fractured part. At point of pressure might be inflammation in a very few days, according to force

used to procure extension. Should consider horizontal position more favorable to *cure ulcers*.

2d *Cross examination.* I only went with intention to see plaintiff. Defendant did nothing more, and expressed no other intention. In case of great pressure, double might have tendency to shorten limb; but I have had about as good success with one as the other. In comminuted fracture quite desirable to keep patient as quiet as possible—in a state of rest—more so than in ordinary cases of fracture. I never have seen a case of double, oblique, comminuted fracture at that point. Such a fracture is of very rare occurrence. Could not occur, I think, unless produced by crushing. When produced by crushing, more difficult of cure.

2d *Re-examination.* When I saw plaintiff with Dr. Crosby, I saw limb uncovered, but not the ankles..

DR. ALBIGENCE PIERCE, *called.* Have practiced physic in Stratford since 1811, and surgery some. Was requested to visit plaintiff June 10, to meet Dr. Davis. He was sitting in chair as described by Dr. Converse, feet hanging over, dripping from both heels. Was a chair with joints, so that it might be placed in a horizontal position, almost. Feet hanging over a foot beyond chair. He was reclining; might sit erect if he pleased, in it. At that time I met Dr. Davis and prescribed for ankles and heels. I barely looked at fracture and examined it so far as to conclude that union had taken place. No extension could then be made—ankles, &c., were in such condition. Ankle upon fractured limb was the worst; ulcers upon both; at heel of well limb not so large as in fractured limb. That on broken limb was an ulcer—to bone—as much as 1 1-2 inches across—much swollen—a deep ulcer. I told Dr. Davis he must take a different course. He said he had poulticed them. I told him that would not answer. No dressings at that time at seat of fracture. I was requested to meet Dr. Converse there the 14th of June. I went; Dr. Converse did not come. I left written directions what course to pursue. I think Dr. Davis and I then agreed that the difference between legs as to shortening, was 2 1-2 to 3 inches; very much as it now appears. I have examined it since. There is a good deal of a curve also. A good deal of the heel is also gone on injured limb. Shortening was occasioned by bones passing by one another—not by the crook only. At that time I had never used the straight horizontal splint; always used the double. Never have used Gibson's splint,

nor seen it used. It is a number of years since I first saw Gibson's splint laid down in Gibson's Surgery. I have used a box splint—a round box splint—at a fracture near this point. In young subjects, in fracture of the thigh, this box splint is the best I could use. That is a straight, horizontal splint. I never considered this fracture, as represented to me by Dr. Davis, as any thing more than a simple oblique fracture. I made no examination to determine; none could be made then more than now. I consider it was in upper part of the thigh, near the trochanter. I call this an unfavorable result.

Cross examination. If the fracture was a compound comminute fracture, it would require a great deal of extension. A very good recovery would not be expected. Shortening is expected in ordinary cases. Should not think strange, in the best recoveries in such a fracture, if there should be a shortening of two inches; do not expect a good recovery in such cases. I meant that, taking every thing together, I do not consider in plaintiff's case a favorable result. Dr. Gibson holds a high reputation; his Surgery, I think, good authority,—is highly spoken of; it is adopted as a text-book in medical schools in New England, or has been; (is shown the book,) and says, this is the book, and this is the splint, (is also shown the plate drawn on large scale,) and says it is a similar splint. Physicians select or make such splint as they think best. Of course we rely, in selecting splints, upon good authors—for a trial, at least. Not admissible at all, to allow attendants to relax extension, or loosen gaiters. It is done, but ought not to be. If not carefully attended to, they are apt to get up bad sores. If the patient does not submit, he would not expect a good result. I should think the bad results in plaintiff's case owing to improper attention and care. Nothing in Gibson's splint tending to create sores, or ulcers, more than on any other splint;—sores are to be anticipated more or less, but by careful treatment may be greatly avoided. During inflammatory stages, ardent spirits would not be admissible at all; case not so favorable if in the habit of using ardent spirits every day. Wetting of the feet and ankles should not be done; it would generally create more *sloughing*, skin peels off; for a time more comfortable; evaporation takes place quicker, and has to be done oftener. In such a case, union could not be expected short of 60 or 80 days. Effect of taking out of the splint earlier, would be shortening, of course, if bony union had not taken place. I think bony union could not be expected earlier. In simple oblique

fracture, don't get union before five weeks. We think best to keep them in the splint longer,—until union becomes firm.

I had conversations with the plaintiff a number of times. He said he was "going to sue them fellows," and asked what it was best to do about it? I answered something. At another time he said to me, "I have been to Woodstock and taken counsel, and am going to sue Dr. Crosby." I asked, "why not sue Davis, as he had the charge of it?" He replied, "I am going to sue Crosby and take Davis as a witness. If I should sue Davis, he is a poor devil, and I should get nothing; and I shall sue Crosby, and use Davis as a witness."

Re-examination. I have treated fractures of the thigh bone; some shortening in all cases; not over an inch. I have treated compound fractures of the thigh, and comminuted, where the bone was broken in two places, and through the flesh. Have seen Gibson's splint laid down in Smith's Manual of Surgery, and recommended. I do not recollect any author but Gibson, and other authors who quoted Gibson, who recommended this splint. I don't recollect any others. Smith does not recommend this; he laid it down among others. We loosen fastenings frequently. If fastenings are loosened by any one, and it required no force to bring them up to the place again, it would not indicate shortening. In Gibson's splint, both limbs are brought up as represented there, and the power applied at feet and ankles. Have known plaintiff,—seen him once or twice a year. It might make some difference in drinking spirits. I never saw the plaintiff drink in my life; am not much acquainted with him; never saw him when intoxicated. Believe the point of pressure might be changed on Gibson's splint; not so easily changed on this as on others. Most important extension to be kept up from two to five or six weeks; not to be kept up *so constantly* for 60 or 80 days. Second conversation with plaintiff I think was at Strafford; he wanted me to give him a writing. Don't recollect as any one was present at either of the conversations. In repeating it, I think I have used Slack's language.

2d cross examination. If the heel had been suffered to rest upon the bed, it would had a tendency to create sloughing. (Is shown a gaiter, and says it is the one in common use.) Have seen gaiters that lace upon the sides. Charles Bell's Surgery is a good work.

Re-examination by Court. A straight splint extends clear up under the arm, and is confined by bands.

FRANCIS A. SUMNER, sworn. Brother-in-law to Mr. Slack. Saw

him the Wednesday after he was hurt; watched with him that night, could not tell who watched with me, think it was Mr. William Slack, now deceased. A number of the neighbors were in. He was in considerable pain in his feet and ankles; it continued all the time; did not complain of pain any where else. Left early the next morning; saw him a week from the Saturday after. Lived in Hartland at the distance of about twelve miles from him. Watched with him that night; he was worse than at the first time I saw him; went away in the morning; did not see him again till about the 1st of November. He came to my place; he did not rest or sleep the second night I watched with him; he complained of pain in his feet, ankles and heels. Did not make but a little examination, as much as I could by lifting up the edge of the gaiters; this was the first time I watched. The skin had begun to come off. All I could see was two small spots, one on the foot, the other near the joint. Second night his heels were very sore and his ankles considerably worse; there was nothing under the heels excepting a coverlid which was spread over the board. Have known Mr. Slack about 20 years; his ability to labor before this injury was very good, could do more work than men in general.

Cross examination. Think the gaiter was laced upon the side; could not tell on what side. The support under the limb was a coverlid, don't know as it was quilted. The second night I loosened the top strings of the well foot once, the first night did nothing at all; do not recollect that he had any sling; did not wet his feet.

TAYLOR SLACK, sworn. Brother to plaintiff; saw him Tuesday after he was hurt; remained there till Saturday towards night. He was in the splint when I saw him, was very restless; he complained of his heels and ankles, but of nothing else. The last day they were worse than the first. Made an examination of the heels the day I left; they had begun to turn purple; he complained of the instep; the pain was in both feet. Don't recollect of seeing him again until after he was moved home. Did not assist in carrying him home. Should not think there was any extension made while I was there of any consequence. When I saw him at home, he was lying in bed so as to clean his feet; his heels were badly swollen, and sores on his ankles. Do not think I saw him again till he got so as to ride out. A part of one heel had fallen off; should describe it about as Dr. Pierce has. Don't recollect seeing what had fallen off; he was before the injury probably more healthy and could do more work than the average of

men. At the time of the accident, lived at the distance from him of about 14 miles. Before the accident saw him usually three or four times a year. Never saw him drunk; never knew him to practice drinking every day.

Cross examination. The attending physician at the time I saw him was Dr. Davis. Did not take off any part of the heel. Couldn't say I furnished him with sling; do not know as he had it. Don't know that I occasionally wet his heels. Did not furnish him with a long stick with a nail in it to scratch his heel. Did not furnish him with any thing of the kind.

LEWIS FOWLER, *sworn.* Lived perhaps 60 rods from where Slack was carried in; was present when the limb was dressed and put into the splint. It was made by Mr. Estabrook. Dr. Crosby was present when he was put into the splint. Dr. Crosby and Dr. Davis had the charge. Saw him twice or three times a week. Did not watch with him. When I saw him he complained of his legs and feet. He had a pulley up over the foot of the bed, and could pull up his feet by a cord. Never saw the apparatus changed while I was there.

Cross examination. Dr. Davis was the attending physician while I was there. Didn't know that Slack had any ardent spirit.

DEPOSITION OF GEORGE BLOOD. I, George Blood, of Boston, in the County of Suffolk, State of Massachusetts, of lawful age, depose and say:—Some time in the winter of 1847 or 1848, Lorenzo Slack and myself were drawing wood from Norwich, Vt., to Hanover, N. H. One day as we were near the west end of Hanover Bridge with our loads of wood, Dr. Dixi Crosby, of Hanover, N. H., came down the river road, and asked Mr. Slack when he was coming over to settle with him? Slack said: "Settle with you for what?" Dr. Crosby said: "For doctoring you." Slack said: "I do not owe you anything; you owe me and ought to pay me something for ruining me in the way you have, making a cripple of me." Crosby said: "I will see whether you will pay me any thing or not, if I get you on the other side of the river," and then asked Slack if he was going over the river that day, and Slack said he was, and should go over every day until he had to pay toll. Slack did go to Hanover that day with me, and further say not.

The plaintiff having rested, a motion was made by counsel for the defendant, upon the case made by plaintiff's testimony that the jury should be instructed that the plaintiff was not entitled to a verdict, upon the ground of variance between his proof and his declaration, in this.—That the plaintiff in his declaration has based his right to recover against defendant, upon an alleged undertaking on the part of the defendant, "for a reasonable reward and compensation to be therefor paid to him by the plaintiff, to reduce, set, dress, *treat and take care of the said fracture, and the plaintiff thereof to cure.*" Whereas, the plaintiff's proof shows, that defendant, when applied to, was confined to his house by illness, and for that reason *declined* taking charge of the case;—and only went over, at the urgent importunity of Drs. Brown and Davis, to assist them in putting plaintiff into the splint; that Dr. Davis had the whole subsequent care of the case; and there was no evidence *tending* to prove that defendant either did, or was expected to, exercise any care over, or have any thing to do with, the case thereafter; and cited the case of *Vail v. Strong, 10th Vt. Reports, 457*; in which it was held that "In all cases where the cause of action originates in contract, and the declaration, in form, counts upon the contract, the contract must be proved precisely as laid; and a variance, in any one feature of the contract, is fatal; and this, whether the action be in form *ex contractu* or in *tort.*" Motion overruled and the defendant excepts.

TESTIMONY FOR DEFENCE.

HORACE ESTABROOK, sworn. Was present after Mr. Slack was carried to the house, and assisted in making a splint. I did not receive the directions from any one; my brother had charge of making it. I made it according to a plan in a book; I think Gibson's Surgery. [Witness was shown a book,—Gibson's Surgery,—and recognized it as the one used.] Believe there are directions given in the book as to the dimensions of the splint. First made the splint with a little variation from the plan, and the next morning Dr. Crosby recommended it should be altered to conform to the plan in the book and it was so altered. Was present at the time Slack was put into the splint. Do not recollect who assisted in putting him in; Drs. Crosby and Davis were present, and I think some of Mr. Slack's brothers.

DEPOSITION OF EDWIN ESTABROOK. I, Edwin Estabrook, of Norwich, County of Windsor, of lawful age, depose and say: That Mr. Lorenzo Slack was brought to our house in April, 1845, on the day and immediately after he was injured by a bank of earth falling on him. When first brought in he was laid upon the floor until a bed was prepared; Drs. Brown and Davis came very soon and assisted in laying him upon the bed, after which they went away but soon returned. Dr. Davis (I think) brought me a book in which were plates of a number of splints, and wished a splint made as directed in the book; the one selected was an inclined plane. Soon after the return of Drs. Brown and Davis, Dr. Crosby came. Little or nothing was done with the fractured limb that day; the next morning Dr. Davis came; some time after Dr. Crosby came I finished the splint as described in the book, except I left the inclined board longer than described; I suggested that it would be easier for the patient; Dr. Crosby remarked that he would rather have practice than theory, or some such expression; I altered it; the splint when applied was in every par-

ticular as described in the book. Drs. Davis and Crosby, with the assistance of others, fixed Mr. Slack upon the splint. Dr. Davis continued to visit him, at first a plurality of times per day, the last of the time less frequently. Mr. Slack complained that Dr. Davis did not come oftener; Dr. Davis said that he came as often as he could be of any benefit. Do not recollect of seeing Dr. Crosby or hearing him spoken of as being at our house more than once or twice after Mr. Slack was fixed upon the splint. Mr. Slack complained of his heels, ankles and toes, and kept some one much of the time rubbing or scratching them; his relatives stayed with and took care of him. Mr. Slack had his feet frequently wet with vinegar or spirits. After 30 to 35 days Mr. Slack's neighbors came to carry him away. Dr. Davis was at length prevailed on to go into the room, and assisted in fixing him upon the litter, at the same time remonstrating against his being moved, saying that if he persisted in being moved that he (Dr. Davis) would take none of the responsibility. When Mr. Slack was taken from the splint, the injured leg was some 1-4 to 3-8 of an inch shorter than the other, otherwise the leg appeared in good condition. There were spots upon the heels and ankles that were inflamed.

Question by defendant.—When did you make the splint, in what hours?

Answer by deponent.—I made it on Saturday evening and Sunday morning; I think it was on both, and I think the day was April 12th; it was the evening of the same day and the morning of the day following after he was hurt.

Question by same.—Was Dr. Crosby present in your shop while you were making the splint, and did he give you any directions about it prior to your showing it to him?

Answer by deponent.—I do not recollect of seeing Dr. Crosby in the shop, and do not recollect of receiving any instruction from him or any other one how to make it, other than what was in the book. When presented to Dr. Crosby I told him how I had varied from the book; he then remarked that he had rather have practice than theory. I then altered it to conform to the plate in the book and the description attached.

Question by same.—In what language was that book printed?

Answer by deponent.—English language.

Question by same.—How do you know that the injured limb was 1-4 or 3-8 of an inch shorter than the other?

Answer by deponent.—I assisted Dr. Davis in measuring it. After he was placed on the litter I placed a stick against his heels, at right angles as near as I could, with his limbs. Dr. Davis had a string that he held to his hip bone and measured down to the heel of each leg.

[The plaintiff objects to all that part of this deposition where the witness speaks of what Dr. Davis said or did.]

Question by plaintiff.—How many times did you see Dr. Crosby at your house while Mr. Slack remained there?

Answer by deponent.—I do not recollect that I saw him only on the Saturday that Slack was hurt and the Sunday following.

Question by same.—Whether you attended upon Mr. Slack while he was at your house, or were you in the house so that you could have seen the surgeons every time they called?

Answer by deponent.—I sometimes assisted in waiting upon him, but did not attend upon him constantly. I was not at the house so that I could have seen the surgeons every time they called.

Question by same.—Did Dr. Crosby ever call with Dr. Converse, to your knowledge?

Answer by deponent.—I do not recollect that he did.

Question by same.—Upon showing the splint that you had prepared to Dr. Crosby, you say that the doctor replied that he had rather "have practice than theory;" did you understand from that expression that he, Crosby, wanted it altered?

Answer by deponent.—I did.

Question by same.—When altered to conform to the book, did Crosby say it was then right?

Answer by deponent.—I do not know that he said anything about it; he made no objection to it.

Question by same.—Whose book was it from which you took the model of the splint?

Answer by deponent.—I do not know who owned it.

Question by same.—What kind of string did Dr. Davis use in measuring the limb; and did you measure with the string?

Answer by deponent.—I think it was a piece of common tape that Dr. Davis measured with; I think that I did not measure with a string, have no recollection of it; I did not measure the limb with a tape, neither did I measure the tape.

Question by same.—How did you get the difference in the length of the limbs?

Answer by deponent.—By my eye on holding the stick across his heels at right angles with his limbs; I was at that time, by trade, a Wheelwright.

EDWIN ESTABROOK.

Interrogatories by DR. DIXI CROSBY, to be proposed to WILLIAM GIBSON, M. D.:

INTERROGATORY 1.—Are you the author of a work, entitled the Institutes and Practice of Surgery, being an outline of a course of lectures by William Gibson, M. D., Professor of Surgery in the University of Pennsylvania, &c., &c., &c.?

INT. 2.—How many editions of this work have you published and when was the last edition published?

INT. 3.—What success have you had in the use of the splint as shown on plate fourteenth of the sixth edition of your work, described in interrogatory first?

INT. 4.—What change, if any, has taken place in your opinion of the use of that splint in fractures of the thigh bone, since the publication of that edition?

INT. 5.—What would be your opinion of the use of the above mentioned splint, in the following described fracture, viz : “two fractures, one a little below the small trochanter and the other at or near the neck. The soft parts on the outward side of the thigh very much bruised and lacerated, the point of the bone penetrating nearly through the skin, which, together with the blood which had escaped from the wounded vessels, gave the appearance of a large tumor. The whole thigh, also, very much swollen,” and the fracture occasioned by the falling of a bank of earth? Please state your opinion in full.

INT. 6.—How long ought a patient with such a fracture to remain in the splint before being removed, and what effect would the frequent removal of the extension half an hour at a time have upon the consolidation and union of the fracture?

INT. 7.—What kind of a recovery would the patient be likely to have if the splint was removed on the thirty-second day from its application, and the patient carried a distance of three miles without the re-application of this splint, or some splint, to make permanent extension?

INT. 8.—How does this splint compare with other splints as it regards the comfort of the patient?

INT. 9.—How does the use of this splint compare with the use of other splints as to its liability to produce excoriations of the heels and ankles, and to what are these excoriations owing. Are they chargeable to the splint in any case or the want of care in the attendant?

INT. 10.—How long have you been Professor of Surgery in the University of Pennsylvania, and how long have you been visiting or attending Surgeon to —— Hospital?

I, William Gibson, of Philadelphia City and County, in the State of Pennsylvania, of lawful age, in answer to the accompanying interrogatories of Dr. Dixi Crosby, do depose, testify and say, as follows, viz:—

FIRST.—To the first interrogatory the said William Gibson, M. D., answers and says—I am.

SECOND.—To the second interrogatory the said William answers and says—Eight editions, the last in 1850.

THIRD.—To the third interrogatory the said William answers and says—Uniform success.

FOURTH.—To the fourth interrogatory the said William answers and says—I have had but one opinion of the use of that splint from the date of its invention down to the present time.

FIFTH.—To the fifth interrogatory the said William answers and says—I should have selected and employed it in preference to the splint of Desault, of Hagerdorn, of the double inclined plane, of Bell, Cooper and others, or to any other splint I have ever read of, seen, or heard of, and for the following reasons: If Desault's splint had been employed, the counter extending band would have created great pressure on the parts in the immediate vicinity of the fracture "a little below the small trochanter," and also upon the fracture "at or near the neck," and severe pain, inflammation and excoriation would have been, in my opinion, the certain consequence, independently of the danger, from that pressure, of displacement or derangement of the fragments of bone at the side of the fractures referred to. Even in ordinary fractures of the middle of the thigh bone, great inflammation, pain and excoriation of the perineum and upper part of the thigh are apt to follow the counter extending band of Desault's splint. Of course the effect of the same counter extending band would be much greater in a fracture "a little below the small trochanter" and the "other at or near the neck." Hagerdorn's apparatus, consisting of two long splints and a foot-board, as modified by myself, would not

have been adapted, useful and efficient as I have found it in most fractured thighs, to the case in question, inasmuch as the long splint must have created painful pressure, if not high inflammation, and might have caused gangrene from its powerful operation on "the soft parts on the outer side of the thigh," "very much bruised and lacerated, the point of the bone protruding nearly through the skin, which, together with the blood which had escaped from the wounded vessels, gave the appearance of a large tumor." "The whole thigh also very much swollen," &c. The double inclined plane of Bell, Cooper and others would have been better than the splints of Desault and Hagedorn, but would have exerted little power, it appears to me, in producing extension and counter extension. I repeat, therefore, I should have selected my single inclined plane for the case in question, upon the ground, that no counter extending band would have been required, that no painful pressure would have been made on the outside of the thigh over the projecting bone, on the tumor of blood, or on the swollen thigh, that counter extension would have been made by the weight of the body, and extension by the bands of the apparatus; thus leaving the soft parts and the fractured bones and large tumor and point of the bone as it were, free and unincumbered.

SIXTH.—To the sixth interrogatory the said William answers and says—I should say that a patient with such a fracture should remain in the splint at least three months before being removed, and that the effect of frequent removal of the extending and counter extending power "for half an hour at a time" would certainly interfere, materially, with consolidation and union of the fracture, and might, even, in some cases, prevent union altogether, and give rise to unnatural joint; shortening of the limb would be the almost inevitable result, moreover, of such movements and of such consequences.

SEVENTH.—To the seventh interrogatory the said William answers and says—Recovery with a limb considerably shorter than the sound limb, and with a clogged, if not ankylosed, condition of the hip joint.

EIGHTH.—To the eighth interrogatory the said William answers and says—No splint, or apparatus, for fractured thigh can at all compare with the single inclined plane, or the splint referred to in interrogatory third, as regards the comfort of the patient. It is indeed one of its chief peculiarities and excellencies; for the limbs elevated, say, at an angle of forty-five or fifty degrees, laying on an easy cushion or mattress with relaxed muscles and the blood drained, by position,

from the limbs, by which swelling, inflammation, ædema and pain are obviated, and great facility afforded the patient of having a stool, through the opening near the base of the plane, without in the slightest degree interfering with the fractured bone, cannot fail to give it great advantages over every other form of apparatus devised for these purposes. It was a favorite and leading principle with the late Dr. Physick, to afford ease and subdue and remove inflammation, swelling and pain, by elevation of the extremities, and the inventor of the single inclined plane had these objects in view, in accordance with the principles just stated, of that great and enlightened surgeon. The inventor had observed, moreover, that most persons seeking an easy and relaxed position for their thighs and legs, generally throw themselves backwards in their chair, resting their whole weight upon its two hindmost legs, at the same time elevating their feet at a considerable height, and resting them against a wall or upon some comfortable place of support. It therefore naturally occurred to him that an apparatus for fractured thigh, combining these advantages,—advantages not possessed by other forms of apparatus,—must serve a most salutary, agreeable and comfortable purpose.

NINTH.—To the ninth interrogatory the said William answers and says—Excoriations and ulcerations about the ankle and heel are very apt to follow the application of the extending bandage in any form of apparatus, acting upon the principle of Desault. They may follow from Desault's, from Hagerdorn's, or from my single inclined plane. But they seldom arise except from old and debilitated and intemperate people. They may be prevented in healthy persons by close attention, by changing the bandage frequently, by using a gaiter, by covering the skin with adhesive plaster or collodium.

TENTH.—To the tenth interrogatory the said William answers and says—Thirty-five years Professor of Surgery in the University of Pennsylvania, and twenty-four years Surgeon to the Philadelphia Hospital, Blockley, formerly Philadelphia Alms House.

WILLIAM GIBSON, M. D.

DEPOSITION OF REUBEN D. MUSSEY.—I, Reuben D. Mussey, of Cincinnati, in the County of Hamilton and State of Ohio, Physician and Surgeon, depose and say;—That I am acquainted with Dr. William Gibson, Professor of Surgery in the University of Pennsylvania. He holds a distinguished position in the profession; his book on the Institutes and Practice of Surgery is good authority, and is

used in many of the medical schools in this country. His work compares well with any similar works that have been published by any author in this country.

INTERROGATORY 1.—How would you regard a double oblique compound comminuted fracture of the upper third of the thigh bone, occasioned by the patient being crushed by a falling bank of earth, with great laceration of the soft parts, and a tumor of the size of a pint bowl at the seat of fracture, with great swelling of the whole thigh, as to its curability?

ANS. TO INT. 1.—Such a fracture is very rare and very serious, and I should regard it as scarcely capable, under any treatment whatever, of being so successfully treated as to present neither shortening nor deformity.

INT. 2.—What would you think of the double inclined plane for such a fracture?

ANS. TO INT. 2.—I should not have used the double inclined plane in such a case.

INT. 3.—What does the anatomy and physiology of the muscles of the pelvis and the thigh require as to the elevation of the lower fragment of the thigh bone in order to its being kept in a line and in opposition with the upper fragment?

ANS.—It points out the propriety of such treatment when it can be practically applied; and I think Gibson's splint as well adapted to effect this as any splint in use at that time.

INT. 4.—At what angle should the thigh be in relation to the body?

ANS.—So that the lower fragment should be in a line with the upper.

INT. 5.—Of what importance in the treatment of fracture is perfect rest of the fractured parts?

ANS.—It is so important that a good result ought not to be looked for without it.

INT. 6.—What are the principles required in any splint for the cure of the fracture of the thigh bone, and by what means?

ANS.—The principles are the proper adjustment of the fracture, and maintaining of the parts in this relation by suitable mechanical contrivances. The means are, a degree of compression of the muscles by bandaging, but more especially by extension and counter extension.

INT. 7.—What principles of the straight splint and of the double

inclined plane does Gibson's splint combine, and what do you ^{bashful} think of its use?

ANS.—It is designed to embrace the principles belonging to them both, and in some bad cases may be as good or perhaps better than either.

INT. 8.—By what means was extension usually made in 1845, in fractures of the thigh bone?

ANS.—The gaiter was used whenever extension from the ankle was required.

INT. 9.—Was the gaiter followed by any sort of inconvenience, and if so, what?

ANS.—It was sometimes followed by sores on the heel or instep.

INT. 10.—How does Gibson's splint compare with other splints in its tendency to produce these sores?

ANS.—It is not more liable to produce them than other splints.

INT. 11.—How long ought a person 30 or 35 years of age to remain in a splint and at rest, for the recovery of a double fracture of the upper thigh bone?

ANS.—Decidedly not less than eighty days.

INT. 12.—What should you say of the use of Gibson's splint in such a fracture of the thigh bone as is above described?

ANS.—It is a good and suitable splint.

INT. 13.—How long have you been in the practice of medicine, and in what departments have you taught?

ANS.—I have practiced the profession about 48 years, and have taught Anatomy and Surgery 34 years. R. D. MUSSEY.

DEPOSITION OF GEORGE HAYWARD.—I, George Hayward, of Boston, in the Commonwealth of Massachusetts, Physician, of lawful age to testify, on oath depose and say in answer to the several interrogatories proposed to me, as follows:

INT. 1.—What is your age, residence and occupation?

ANS.—My age is sixty-two years, residence Boston, and occupation the practice of Medicine and Surgery.

INT. 2.—What experience have you had in the practice of Surgery?

ANS.—I have been in practice thirty-nine years, and was for twenty five years Surgeon to the Massachusetts General Hospital, and for fifteen years Professor of Surgery in the Medical School of Harvard College.

INT. 3.—Whether or not you are acquainted with Dr. Gibson, of

leiphia, and if so, is he good authority in surgical practice?

Ans.—I am acquainted with Dr. Gibson, and I regard him as high authority in surgery.

Int. 4.—Are you acquainted with the principle of his splint, called the inclined plane, for the treatment of fractures of the thigh; and if so, how do you regard it?

Ans.—I am acquainted with the principle of his splint, and I regard it as a good one in cases of fracture of the thigh in the upper third of the shaft of the bone.

Int. 5.—If a person had a double fracture of the thigh bone, the first fracture just below the small trochanter, and the other at or near the neck, the point of the bone nearly pricking through the skin, with great swelling of the part from the effusion of blood from wounded vessels, and the whole thigh greatly swollen, occasioned by a falling bank of earth, how should you regard Dr. Gibson's inclined plane as a splint to dress it on, and afford a good opportunity for the bone to unite in proper form and time?

Ans.—I should regard Dr. Gibson's splint as one well calculated to answer the purpose.

Int. 6.—How long ought a person with the above described fracture to remain on or in a splint for firm union to take place, so that the splint may be laid aside without fear of a shortening of the limb?

Ans.—In a fracture of that kind I should say seven weeks at the least; and even then the patient ought not to bear any weight upon or use the limb, as it might then produce shortening and deformity.

Int. 7.—Would you treat such a fracture as above described in a straight, horizontal splint?

Ans.—No, I should not.

Int. 8.—What would be the effect to take a person with the above described fracture from the splint on the thirty-second day of treatment and carry him a distance of three miles and not use the splint afterwards?

Ans.—In all probability there would ensue shortening and deformity of the limb.

Int. 9.—In fractures of the thigh bone just below the trochanter minor, what has been the usual condition of the limb, after union has taken place, in your experience?

Ans.—In the best recoveries, under the best treatment, a shortening of one inch is as little as can be reasonably expected.

INT. 10.—In fractures of the thigh bone, when extension and counter extension is used, are excoriations or ulcerations on the heels and ankles a frequent result, and to what are they owing?

ANS.—They are a very frequent result, and they may be owing to the pressure of the bandages, gaiters, or whatever mode is used for making extensions, or to the general state of the patient's health, or to the nature of the injury, and sometimes to the weight of the limb itself. It is in some cases very difficult to avoid ulcerations.

INT. 11.—In any case to your knowledge, have excoriations or ulcerations of the heel been owing to the splint, or can they in any case be chargeable to the splint itself?

ANS.—I think not.

INT. 12.—In the treatment of such a fracture as above described, what must be the nature of the extension; steady, or may it be from time to time relaxed?

ANS.—It must, by all means, be steadily kept up.

INT. 13.—What would be the effect, in such a case as described, of taking the limb out of the splint for a few minutes, from time to time, by nurses and watchers, previous to the thirty-second day?

ANS.—I should say that it could only be done at the risk of producing displacement of the fractured ends of the bone.

INT. 14.—At how late a period, in your opinion, will deformity or curvature present itself in a fractured limb?

ANS.—As late as the fourth month, I think.

GEO. HAYWARD.

DR. HENRY B. BROWN, *called*. Am a Physician; been in practice 26 years. About 12th April 1845, I was at the office of defendant, and a messenger came saying that Slack was severely injured, and requested defendant to go. He remarked that he was quite unwell, and declined going. I think Dr. Crosby remarked, here is a physician, perhaps you can get him to go. The messenger asked me, and I went immediately to the house of Estabrook. I found plaintiff lying upon floor, apparently very severely injured, breathing badly, and making much complaint of soreness. One limb lay in a position that indicated fracture. He lay as he was brought in, his clothes on, dirty. Made no examination; prepared a bed. Whilst arranging the bed, Dr. Davis came in. After the bed was prepared, we carried him to bed, placed him on it. I carried broken limb; had

several assistants. I came to the conclusion from the *crepitus* motion of broken bones—I had one hand under thigh—that the limb was severely crushed and broken. After placing him upon the bed I examined place of injury as well as I could, and came to the conclusion there was a double fracture, two fractures; difficult describing it. [Describes how he thought it broken.] Point of upper fragment was outward and upward obliquely; also broken near neck; considerably swollen at the time; large tumor. Dr. Davis and I both came to the conclusion it was broken at the neck, or near there—we could not tell exactly. Severe laceration of soft parts, being pretty nearly a compound fracture; bone did not come quite through skin, but could be felt. Large swelling at the point of fracture—as large, I should think, as a pint dish, if in same shape; supposed it occasioned by ends of bones tearing the flesh, and blood. After making the necessary examination, Dr. Davis made extension, by taking hold at the foot, others at shoulders. I placed the limb in position. We then went and talked the case over; and as we considered it a severe case, and had no apparatus for dressing it, we concluded to go to Hanover to defendant. We went for the purpose of representing the case to him and getting his opinion as to best method of treating the case, or getting him to go himself. In explaining case to defendant, he rather coincided with us, and said he had no proper apparatus for dressing the limb. We then talked of the kind of splint to be used, and he took out from his library one or more books, and on looking over we came across this splint in Gibson's Surgery, which we examined more particularly. We talked of the advantages on looking at plate, and all concurred that that was the best that could be adopted. We asked defendant if he did not think he could go over, and over-persuaded him to go. He finally went. Davis and I went right back, and think Davis took the book and carried it to Norwich to have splint made by. I don't remember what was done immediately after our return. Guess Dr. Davis said Estabrook could make splint, and don't know but he showed him the plate. When Dr. Crosby came he looked plaintiff over, did not examine him particularly; might have put his hand upon him—examined his pulse, felt of his leg—but not to handle him any. He was hurt internally. I rather wanted him to examine to see if I was right. He said it would only cause unnecessary pain;—he was more swollen than when I left him, and he declined doing it. In my opinion it would have created unnecessary pain. It occurred

to me then, that from the nature of the injury, that was the best kind of splint; and have examined since more into the nature of the splint, and am still of the same opinion. I then left, and had no more to do with it; I never was called to go again. Reason why I did not go again, from the fact that Dr. Davis took charge of the case, and I had no invitation to come again. My present opinion of the advantages of the splint used for that particular case over other splints:—The impracticability of applying the *straight* splint by reason of injury outside of thigh, was one reason I have, from the conclusion, so much laceration and swelling, difficulty of applying straight splint by reason of the pressure upon the injured part. In next place, counter extending band would have tendency to fling upper fragment out of position. [Describes application of straight splint.] Straight splint is made with single board running up the side, with holes in it, and counter extending bands make constant pressure of board upon the wound, and difficult getting sufficient extension; would also have tendency to tilt up the bone. Over double inclined plane could not get sufficient extension and counter extension. Being fractured high up near the neck, more difficult keeping bones in position than if fractured nearer the centre. With straight horizontal splint could not control the fragment from tilting up. In my practice, in using the double inclined plane, have had to apply bands, or something to keep bones in place and confine limb in splint. In this case, would have been difficult to do this. The whole thigh was badly swollen; discoloration half way down the thigh. It was bruised in addition by falling of dirt upon it. There would be more difficulty in the double inclined to dress the wound than in the single inclined plane. Commonly use three or four short splints with double inclined plane, confined with bandage. They all come together from market. Think it would not have been admissible to apply such an one in this case. Have impression that counter extending band on straight splint would create excoriation. In double inclined, danger of excoriation of the ham. I think Gibson's contains all the principles of the three splints. We get extension from the foot, counter extension from weight of the body, flexion from thighs being thrown up towards *pelvis*. The convenience for stools is an advantage over every other splint. So constructed it can be done without moving the patient. Effect of frequent wetting of feet and ankles is to increase tendency to soreness; skin becomes wrinkled and more easily affected. Effect of nurses removing the

fastenings or extension straps would be to shorten the limb. Effect to take out of the splint before proper time is to displace the bone. Proper time for confinement to splint is from two to three months. Depends a good deal upon how the patient has been treated and the general health of patient. Know of nothing in this splint to make excoriations more than the *double inclined or straight splints*. Have recently—nearly a year since—examined his limb; saw nothing to change my opinion of the nature of the fracture; if any thing, it was confirmed. Shortening might have been both from slipping by of the bones and by curvature.

Cross examination. Have known defendant 30 years. Defendant has been in practice 29 years. Considered good authority as a surgeon. Think he is the surgeon resorted to in that region for advice and assistance. That the reason we went to him was because we thought he knew more about it than we did. We made some examination before going to Crosby's. On further examination thought it smashed up or crushed. I came to the conclusion there were two fractures. On carrying patient to bed, impression it was crushed. After getting him upon bed, came to the conclusion it was a double fracture. Usually move the limb one way and the other, and surgeon keeps his fingers upon the limb. We (Dr. Davis and I) did so in this case, and both came to the same conclusion. *Crepitus* means grating of ends of bones together. Sometimes get location of fracture by feeling, sometimes by the ear. If crushed it could not be straightened. Never made any after examination of the fracture. I have been informed by attending court, by reading the authors, not by Dr. Crosby—have not seen Dr. Crosby for a year—not to talk in regard to this matter; not since the examination at White River in July last year, I think it was,—except his speaking to me a short time since about coming to court. I have treated several fractures of thighs since last court, and before. Had seen Dr. Gibson's Surgery and splint, but made no particular examination of it till that occurrence. It has been used before. Think defendant told me he had never used it, at the time. I should not select Gibson's in all cases of the thigh. If simple fracture of the thigh, where there is no tendency to shorten, I should use either the double inclined plane or the straight splint. In a simple transverse fracture, no difficulty except to keep bones in opposition; splint necessary for that. If I had a simple oblique fracture, should use double inclined plane. More danger of tilting up of

bone in a case so high up, than in many others. More danger of tilting in a simple oblique than simple transverse fracture. In simple transverse fracture, bones not so readily tilted up. Difficulty is to keep bones in place. In simple transverse, I should apply straight splint, many tailed bandage, cushion splint, and strap these splints close to the body.

[Here suspended to accommodate Dr. Davis to go to Norwich to see a patient nearly dying.]

DR. IRA DAVIS, *called*.—In April, 1845,—about the 12th,—I was called by a messenger to go and see Mr. Slack, who, it was said, was injured by the falling of a bank of earth. I found him at Edwin Estabrook's; Dr. Brown there; plaintiff lying on floor, clothes on, as taken out. We took measures to get him on to bed, think as Dr. Brown has described. The fracture, in the first place, very nearly a compound fracture; bone was tilted up, and formed quite a tumor; little more than the scarf skin left between; some discoloration of parts; tumefaction bare, think six inches in diameter, about the size of a pint bowl. (See Plate No. 1.) From examination it appeared

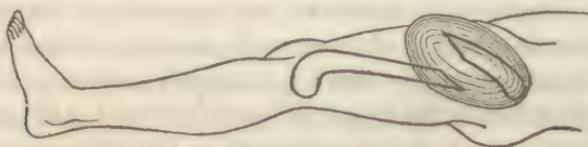


Plate No. 1.*

to me that the fracture was from two to three inches from trochanter minor. I thought there was another fracture. Can't say that I determined in my own mind where the other was. It was discussed by Dr. Lewis and the rest of us, and quite evident that there was another higher up. Difficult to tell how far from trochanter. After examining the case, concluded it was a bad case, and we had no dressings. We learned defendant had been sent for and could not come. Went to see if he had suitable dressings; if not, if possible, to get him to come over. We described the case as accurately as we could, and he said he had no proper apparatus. We looked over books, and came to Gibson's splint, and suggested that as best. This splint had two properties that recommended it. The double inclined plane I thought improper; could not get extension, on account of having to apply bandages,—which this case would not admit of. Another was, this splint left the patient exposed to treatment—no bandage in the

* The fracture as described by Dr. Davis; the upper fragment tilted up by the action of the Psoas and Iliacus muscles.

way—whole limb left exposed and still sufficient extension. Another thing was convenience for stools. I carried the book down, I think,

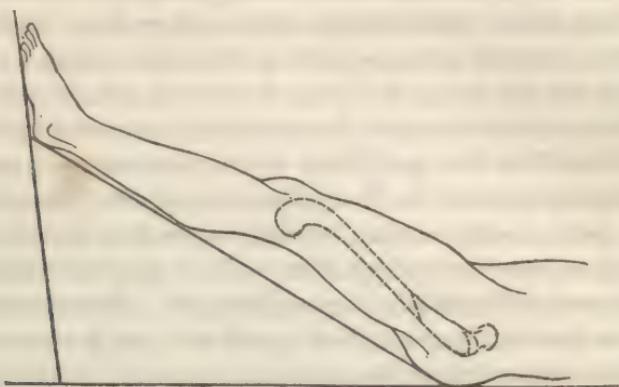


Plate No. 2.*

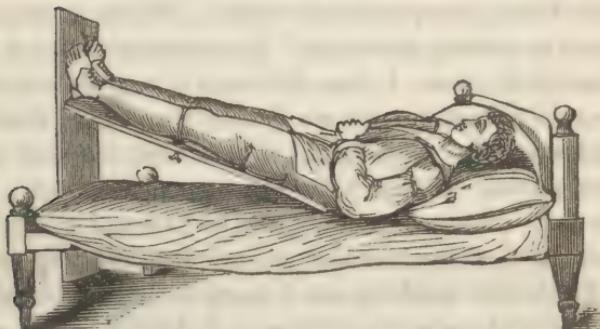


Plate No. 3.†

* Plate No. 2 shows the advantage of position on the inclined plane, the lower fragment of the bone being brought upon a line with the upper.

†The same, showing the position of the patient on Gibson's splint, which is described by Dr. Gibson as follows:

"With this view I contrived the following machine: consisting of a board sixteen inches wide, two feet four inches high, placed vertically, with six mortises near its upper extremity; of another board of similar length and breadth placed horizontally; of a third, three feet in length, and extending from the extremity of the horizontal piece to within ten inches of the top of the upright one, so as to form an *inclined plane*. The whole being joined together, present the figure of an unequal triangle. At the lower extremity of the inclined plane, an opening is left six inches wide, and eight long, with a corresponding door, intended to convey a vessel beneath the patient to receive the feces or urine. Opposite this there is another and a larger opening, of a circular form, in the horizontal board, to afford ample room for the pan to rest.

and gave it to Mr. Estabrook. He examined the plate, and said he could make one. Pretty soon Dr. Crosby came, and I don't know as I gave any directions; don't know as any body did. Splint made according to book. Next morning a good deal swollen. Day before (Saturday) presume some one spoke to defendant to come and assist in putting him into the splint. Next day he was put into the splint. I attended upon him after that for some time, twice or three times a day. Plaintiff had then a child sick which I was attending upon. I had previously practised in his family some, and Dr. Converse some, and Dr. Lewis, I should think. Plaintiff expressed no objection to my continuing in attendance; don't know as I had any conversation with plaintiff about defendant's calling on him again. Some two or three days after dressing, he complained a good deal, and I examined and found two or three broken ribs, which accounted for his restlessness; this on right side; two certain, don't know but more. It was necessary to use anodynes,—not certain but morphine,—not certain but McMunn's Elixir, a preparation of opium. Watchers after a while got in habit of relaxing fastenings. He complained, after a week, or some days, of his feet. I gave directions to keep up extension, and not to wet the gaiters, but wet the limb at the point of fracture with spirit and water, and keep gaiters dry, and wet wherever heat was, except the gaiters. Gaiters were wet from time to time; I did not see them wet. I directed extension kept up; I found on one occasion straps loosened, a handkerchief around the limb, and foot loose. Taylor Slack had watched, and I found it loose and handkerchief around it; don't know who put it there. I objected to their removing plaintiff when they did. My impression is it was 32 days of being in splint. I made objection to any body that said any thing to me about it. Made it in plaintiff's presence,—talked about it several times. Plaintiff was very anxious to get home, and control his spring's work.

There are, likewise, two mattresses, two foot cushions, and a pair of gaiters.

* * * * *

It will be seen in a moment how this machine operates. The two feet, by means of the gaiters, are placed on a level, and there retained; the lower fragment of bone cannot, therefore, be drawn upon the posterior surface of the upper fragment, as usually happens in oblique fractures, but must be kept in its natural situation; the weight of the body hanging by, and operating upon the superior fragment, draws it downwards, removes it from the inferior fragment so as to prevent overlapping, and thereby preserves the whole limb of its natural length,—extension being made upon the ankles, counter extension by the weight of the body."—Gibson's Surgery, sixth edition, vol. I. pp. 321 and 323.

My objection was, the fear it might produce a distorted limb. Neighbors had prepared a sort of litter to carry him on their shoulders. This was nearly prepared when I came down. I objected to the removal, and felt pretty cross. They all insisted on his removal, as his business was suffering. I went away, and was sent for; after sent for second time, I went, and found the *die was cast*; and suggested to them to cut a bark and put around limb. They wanted I should put it on. He was taken out of splint, lying on bed, limb horizontal. They wanted I should put on bark; I did so; but would not consent to his removal. I measured the limb that morning; there was from 1-4 to 1-3 of an inch—not over 1-3 certainly—shortening. After he got home some days, I measured again, and found no perceptible difference. I continued to attend upon him a couple of weeks after this, to the time Dr. Converse or Pierce attended. After carried home, he was not put upon splint again; splint not carried there. I procured a rough double inclined plane and put it on that. After he got home —about a week after—(think the eighth day after,) I found a shortening; I found limb curved out. Think I was sent for, saying, "limb had got out of place." (He had become uneasy and bark was taken off.) I went up, and found considerable of a curve at the point of fracture. I could not extend it to its proper length, but succeeded partially. At some time,—can't tell when,—he was put on a chair. Think he was put on double inclined plane same day he was carried home. When sent for, I found limb curved, and applied force and tried to get proper extension and restore length of limb. Don't remember who assisted. Some neighbors in; rather think Orange Lyman was one. Rather think it was old Mr. Slack who went for me. I once discovered that thick skin had been removed from left heel; plaintiff informed me that his brother David took it off. I was at the house of Mr. Blaisdell; he was sick with an abscess; can't tell what year it was; and Dr. Crosby was there. Don't remember an expression used by defendant at that time; don't recollect any such talk; don't remember any such talk any where. I inquired of defendant if he had used such a splint, while he was at Estabrook's, the day limb was set. He said he had not. Think he said he had once used the straight, and one leg was crooked and could not be confined. I first used a strip of cotton cloth above the knee to relieve ankles, while at Estabrook's. Ankle had become inflamed and sore. So far as I have had experience, sores were more or less frequent at the point

where extension is made. I attribute sores in part to the extension and in part to the wetting. So far as the splint is concerned, this not different from double or straight. I at the time concurred in the propriety of this splint, and have not changed my mind. Had he continued in splint 30 days longer, I think, with regard to the fracture, the limb would have come out good,—very little shortening. I don't know but difficulty with heels might have been more; can't tell. Could have relieved the pressure. Perhaps in a couple of weeks more it might have answered to put him upon a double inclined plane. I think, if gaiters had not been wet, the sores would have been less.

At first dressing, the leg rested upon a quilt made of a comforter, and quilted with cotton batting. Form of gaiter (shown) is similar to the one used. Can't say whether batting was according to directions in the book.

Cross examination. I have practiced medicine 30 years; have practiced surgery some; drawn teeth, and bled, and reduced some dislocations. Not called upon to perform any important operations. Practice of medicine my general business; occasionally have attended a broken limb, but more usually, dislocated limbs. I put up the medicines and he took considerable. There was no particular surgical skill to be exercised, except to keep limb in place, and keep up extension. When we dressed the limb I have impression I inquired as to applications to be made. So far as surgery was concerned I supposed that was finished after dressings were put on. Don't know as I ever called on defendant but once afterwards, about it. Dr. Crosby called with me once, perhaps a couple of weeks after, and perhaps more; no recollection of his calling but that once. A great many persons were present when plaintiff was put into the splint; defendant superintended it, of course. Don't say I never had talk with defendant about limb but that once—that he didn't call but once. He thought, of course, extension must be kept up. As to external applications, my impressions were that treatment was to be same as in any other inflammation. I suggested that to Dr. Crosby; he concurred in it. I supposed it a common sense idea, still I suggested it to Dr. Crosby; I always pay due deference to higher powers. At Estabrook's he complained of feet and ankles; think greatest complaint was in right ankle, till relieved. Presume I was in habit of reporting to Dr. Crosby when I met him, but cannot remember time

or place. Am satisfied I told him he must not loosen it. I can't say but the time Dr. Crosby called with me I met him in the road and told him patient was very uneasy and restless, and invited him to call and get him settled down. Think I told him he wanted extension taken off. Well limb was released,—I can't fix the time,—it was before he left Estabrook's. I can't say whether it was at the time he called, or subsequent. If not done at that time, probably done without his direction; can't fix the time. I don't recollect inquiring of him afterwards. Probability is, before that, that when I saw him I did state the case to him. We bolstered up the ribs as well as we could. The skin became parboiled; ankles became inflamed and excoriated. Have the impression that on instep of broken limb there was some blistering. I loosened straps frequently and put in batting and relaxed straps at foot-board. Put underneath outside gaiter, tufts of cotton, and something under ankle, to relieve. Did this several times. Tucked batting down under gaiter to relieve pressure. It was sore—was painful. Think it was a suggestion of my own. It was rather a natural one, to soften. I don't call to mind any one else suggesting it to me. I don't know that I ever undertook to compare so as to be competent to decide the comparative merits of the various kinds of splints. This excels the double inclined because it supercedes the necessity of bandaging or strapping. In single inclined plane, counter extension is made by body; in double, somewhat so; the knee rests upon splint. If limb is straight it is operating all the time. They always use bandages and short splints on the double inclined plane and not on Gibson's. Never saw that used but once. That had none, and no need of any. Have seen double inclined used—always used them. The counter extension most at the other end from the extension. I measured limb with a tape and judged of difference by the eye. Measured the two limbs; measured them frequently; have measured other subjects. Don't know as I examined his heels, in particular, after he got home; examined at Estabrook's; discovered sores on ankles; none then on heels. Not very long after, think in a day or two, he showed me his heels. Think there was not ulceration at that time. I afterwards discovered ulcerations; can't tell what time. He was feeble when he was carried home. The ankles and heels had been growing more tender. Considering his state of health, I do not know of any objection to his bearing further extension. Might have borne it, although uncomfor-

able. Can't tell what would have been the consequence of putting him in again. If he would have kept quiet, he would have endured ; a great deal depends on keeping quiet. He might have endured longer. More comfortable to patient not to lie in splint. As far as irritation is concerned, and restoration of general system, (without reference to fracture,) would have progressed better without being on splint. Whether as to being confined solely to gaiters, I should think he had better not. Might have been changed ; pressure was changed, I think at suggestion of Dr. Sweatt, by putting band around above knee and fastening to foot-board ; I then loosened straps at feet. Presume not a great while at a time, perhaps half an hour or an hour at a time. Can't remember ; perhaps two hours ; not so long as to disturb circulation. About a week after he got home, some displacement ; a curvature ; I supposed the union was not a bony union at that time ; not severed entirely, as I could not perceive the sharp point of bone. I applied force to restore it to proper length. Did not intend to separate the union. The muscular resistance was great. He continued on the double inclined plane I think more than two or three days. Can't tell how long. Think till I got him into chair. Not certain but he continued on double inclined plane afterwards. Not certain about that.

Re-examination. I have treated a few cases of fracture after put upon splints. I always avoid such cases if I can. My impression is, I met defendant in the road. I asked him to go in to quiet Slack's nerves—to quiet Mr. Slack down. I was attending upon him, and called upon him. I called upon Dr. Sweatt. He was at my house and I invited him to go down with me and quiet him down. My impression is that when I called on Dr. Sweatt, there had been talk of carrying him home. I took the liberty to invite in any physician. My impression was the pressure might have been shifted and he kept on splint till it would answer to move him home, with reference to a proper cure of the fracture—having more reference to that than any thing else. At Estabrook's I think there was some sort of apparatus, or pulley, attached, to relieve pressure at foot-board. It then began gradually to shorten. Not much shortening previous to that time. After displacement at Slack's, heels were let entirely down. Think heels were worse after this than before. Heel grew sore more rapidly after scarf skin was taken off. I have had three cases, in Norwich, of fractured thigh. There I had charge of them from commence-

ment. Also other fractures. Had no other case since this case.

2nd Cross examination. I never sought after surgical cases. Can't tell what defendant did to quiet plaintiff; think he told him he must remain in the splint to have a perfect recovery; don't know but he mentioned the length of time; don't remember what he did say and do. I think the old skin had better been left on.

DEPOSITION OF WILLIAM SLACK.—I, William Slack, of Norwich, County of Windsor and State of Vermont, of lawful age, depose and say, that I am father of Lorenzo Slack, of Norwich, that I was present at Edwin Estabrook's on Sunday morning, when said Lorenzo Slack was first put into the splint, and at that time had a conversation with Dr. Crosby respecting the reason for using that particular kind of a splint, which was because, as the limb was badly bruised and blackened, there was danger of mortification unless it was kept cool, and an opportunity for the air to circulate about it, and to make applications to it; and I observed, that from the position of the leg upon the splint, such would be the fact. From the smashed condition and black appearance of the limb, and his general appearance, I thought it doubtful whether he ever recovered. I saw the said Lorenzo quite a number of times while at Estabrook's; from time to time as I saw him, I thought from all I could learn he was getting along as well as I could expect. I was there when Lorenzo was taken from the splint; Ebenezer Spear, Esq., Orange Lyman, Dr. Ira Davis, Edwin Estabrook, and several others whose names I cannot recall, were present at that time and assisted in his removal. Lorenzo had been anxious for a number of days to be carried home. He said he could be taken care of at less expense. Dr. Ira Davis was his attending physician, and the only one that I saw there except at the time when he was put into the splint, when Dr. Crosby was present, as above stated. Dr. Davis advised Lorenzo not to be moved; if he would stay awhile longer he could be removed without injuring him. Dr. Davis told him he was doing well, and if he went home he must go on his own responsibility, and not on his. Dr. Davis told him he would not assist him in his removal, because he would not take any responsibility. I heard him tell Lorenzo if he staid there he thought he would get up with a good limb, but if he went away he was afraid it would injure him. Dr. Davis left the house, and I afterwards found him at Dr. Lewis', and endeavored to persuade him to return to Estabrook's, and he so returned; he told Lorenzo he would

take no responsibility with regard to his removal. Lorenzo said he should go home. Dr. Davis finally attended to assist in fixing him up, saying he should take no responsibility and thought he ought not to go. Dr. Davis sent a man into the woods to procure a piece of pine bark, directing him what size and length ; this was procured, and the limb placed in it. I saw Dr. Davis measure the limb, I think after the splint was removed, he showed me the difference in the length of the limbs, and it was from a quarter to a third of an inch, the lame limb being the shortest. Lorenzo was carried home upon something resembling a bier, borne upon men's shoulders ; I went with those that carried him ; he occupied his time among other things by playing upon a Jew's harp. Dr. Davis again measured his limb after he got home, and said he thought it was not injured any ; he so told Lorenzo ; after he was removed to his own house, I should think that I saw him oftener or as often as while at Estabrook's ; I think I had seen him two or three times after he was carried home, and heard nothing from Lorenzo or any one else but what the leg was as well as when he was brought home. One day after this I went up to see him ; I thought that it lay crooked ; I told him that he ought to have the Doctor, and I went immediately for Dr. Davis ; we waited there to have a splint finished ; as soon as it was finished, we took the splint and went up to Lorenzo's.

Questions by Defendant.

INT. 1.—Was Dr. Crosby present at the time Lorenzo was taken from the splint and carried home from Estabrook's, or not ?

ANS.—He was not in my sight, nor did I hear his name mentioned.

INT. 2.—Did you or not ever hear Lorenzo while at Estabrook's, complain that Dr. Crosby did not visit or attend upon him, or that Dr. Crosby neglected him ?

ANS.—I never did that I know of.

INT. 3.—Did you or not ever hear Lorenzo, while at Estabrook's, express any expectation that Dr. Crosby would call again as a physician or surgeon ?

ANS.—I did not.

Cross examined by Plaintiff.

INT. 1.—What did you see Dr. Crosby do or overhear him say the Sunday morning that Mr. Lorenzo Slack was put into the splint ?

ANS.—I saw Dr. Crosby holding the splint, and heard him say something about making some alterations.

INT. 2.—What did you hear Dr. Crosby say after he was put upon the splint?

ANS.—He must be as patient as he could, and "we think we have got you placed in the best position we could;" I think Lorenzo said in conversation that he must call and see him again, and I think he said he would.

INT. 3.—Why did the plaintiff say that he would go home?

ANS.—He had various reasons; thought that he should be better off, as he should be at home.

INT. 4.—What did Dr. Davis measure my limb with?

ANS.—With a white tape. He measured it by putting the tape along from the top of the upper part of the thigh and running down on the side to the lower end. I saw no other measure.

INT. 5.—What did plaintiff most complain of while at Estabrook's, in your hearing?

ANS.—Of being tired out, worn out.

INT. 6.—What particular parts did plaintiff complain of most?

ANS.—It was different at different times; sometimes he had more pain in the well leg than the other, and at other times he complained more of the broken leg, referring the pain sometimes to the broken part and sometimes to his heels and ankles, cannot pick it out.

INT. 7.—Did you know that there was any sores upon plaintiff's heels or ankles at the time he was removed from Estabrook's?

ANS.—I saw sores on his ankles, and heard there were sores on his heels, but did not see them. Saw chafed spots on the ankle, but do not recollect of seeing any running sores. Saw a redness about the ankle, but did not notice that it was swollen.

INT. 8.—Were plaintiff's complainings more or less after he was removed?

ANS.—As a general thing, I should think he complained more while at Estabrook's.

Questions by Defendant.

INT. 1.—Did Lorenzo Slack, or not, at the time of the conversation between himself and Dr. Crosby, request the Doctor to give any further attendance upon him as a surgeon or physician?

ANS.—He did not, to my understanding.

INT. 2.—Who had the care and attention of Lorenzo while at Estabrook's?

ANS.—I never knew of any one but Dr. Davis.

INT. 3.—Was Lorenzo crazy or delirious while at Estabrook's, and if so, how much and when?

ANS.—The day his leg was set I thought he was wandering or out of his right mind. The next time that I was there, he said he did not know that I was there the day he was put into the splint. I did not know, or observe, that he was wandering afterwards.

Question by Plaintiff.

INT. 1.—Did you, the day you saw me put into the splint, ask any questions that I did not answer correctly?

ANS.—I do not remember of asking any questions.

WILLIAM SLACK.

DEPOSITION OF JONATHAN FREEMAN.—I, Jonathan Freeman, of Freehold, in the County of Monmouth and State of New Jersey, of lawful age, depose and say, that in the years 1846 and 1847 I was a resident in the town of Hanover, in the county of Grafton and State of New Hampshire, of which town I had then been town clerk thirty-four years. In said year of 1847, and also in the previous year, 1846, I was accountant and collector for Dr. Dixi Crosby, of said Hanover. In the month of December, 1846, I entered in a pass-book, which is now in my possession, a list of accounts which I had copied from said Crosby's ledger, as I had been employed as his agent to draw off copies of bills of account, and to present the same to his debtors for settlement. On the 9th day of January, 1847, I presented a bill from the bundle of bills in my possession, to Lorenzo Slack, of Norwich, Vt., which said bill was a copy of said Crosby's account against said Lorenzo Slack, and at the same time informed said Slack that it was a copy of Dr. Dixi Crosby's account against him for professional services rendered him, and from the bill read to him the amount, which was six dollars, and at the same time informed him that I was an authorized agent to receive payment of the bill. Slack said he had never employed Dr. Crosby, and would never pay him; and if ever he got any thing, he would have to get it of Dr. Davis, who did employ him. Slack became enraged, uttered much profane language, and complained of the account having been charged to himself. The account was presented to Slack in the presence of one or more persons, who were strangers to me. From my memorandum and the dates which I entered upon it at the time, I am enabled to know the amount of the account and the time of presenting it. I furthermore state that

the bill hereunto annexed is the same bill which I presented to said Slack; that it is in my own hand-writing, and that it is the only bill which I ever drew off or presented to said Slack in favor of said Crosby:

MR. LORENZO SLACK,	
1845.	To DIXI CROSBY, Dr.
April 12. To visit and adv.,	\$1,00
" 13. " " att'd and applying fracture app.,	5,00
A	\$6,00

The annexed bill, marked A, is the bill above mentioned, and furthermore your deponent saith not. JONATHAN FREEMAN.

DEPOSITION OF HANNAH RAMSDELL.—I, Hannah Ramsdell, of lawful age, depose and say that I am sister of Lorenzo Slack, of Norwich, in the State of Vermont, that I was at his house when the news came that he was injured by a bank of earth falling upon him. On the next Tuesday, think it was, I went to the house of Mr. Edwin Estabrook, in said Norwich, where my brother was, and remained there, nursed and took care of him for about one week. I was then absent four or five days, and Mrs. Brigham, my sister, came there before I left and remained during my absence. I then came back and stayed another week, after which I nursed him no more.

INT. 1.—Please state where and in what position your brother was, when you first saw him?

ANS.—He was lying upon a bed, with his head and shoulders raised by pillows, his legs lying upon a splint and his feet fastened to a foot-board by gaiters.

INT. 2.—State what physician or physicians attended him, and dressed his limb, and had the charge of him?

ANS.—Dr. Ira Davis, of said Norwich, who married my sister, was the only physician that I saw do any thing for him, or heard give any directions.

INT. 3.—Please state what the directions given by Dr. Davis for the management of your brother during his absence were, if any?

ANS.—He directed us to wet the broken leg at the place of fracture, which was black and blue, with spirit and water. He also left some drops, which he called Mr. Munn's Elixir, which we were to give him when he was restless and could not sleep.

INT. 4.—Please state whether or not you had any directions in regard to the position of his feet; if yea, state what the directions were?

Ans.—Dr. Davis directed that his feet should remain just as he left them.

INT. 5.—Please state what was your management of the injured limb when Dr. Davis was not present?

Ans.—Lorenzo often complained of heat and itching of his heels, ankle, and instep, and wanted them wet with rum, which we frequently did. We also untied the strings which held his feet to the foot-board and loosened the lacing strings of the gaiters, so that we could scratch the parts that itched.

INT. 6.—State whether or not Dr. Davis complained of this treatment of the patient?

Ans.—He said it would make the gaiters stiff and the heels tender, which would increase the danger of sores.

INT. 7.—State whether or not Dr. Davis made extension of the broken leg from any other place except the ankle?

Ans.—He fastened some striped webbing to the knee by winding the bandage around the knee and carrying the webbing to the foot-board. I think this was applied about the time I went the second time to take care of my brother.

INT. 8.—State what means, if any, he had for raising the heel from the splint?

Ans.—He had a string or line made fast to the great toe of the injured leg, which passed over a pulley suspended over his bed, and he held the string in his hand, or had it where he could reach it when he chose.

INT. 9.—State whether or not he made use of this means for raising his leg?

Ans.—He did very frequently use it.

INT. 10.—State whether or not your brother ever complained of the splint used and asked to have it removed?

Ans.—He never complained of it in my presence, nor asked to have it removed.

INT. 11.—State whether or not you ever saw or heard of sores on your brother's heels or ankles while you were at Estabrook's; also whether or not you should have known if there had been sores?

Ans.—I never saw or heard of any on his heels or ankles while he was at Estabrook's, and I certainly should have known it if there had been any.

INT. 12.—State whether or not you saw him at Estabrook's after you left nursing him?

ANS.—I saw him once, about a week after I left there.

INT. 13.—State whether or not you ever found the fastenings at the foot-board looser in the morning than you left them the night before, and appearing to have been untied?

ANS.—I frequently found them looser and appearing to have been untied, and Lorenzo said the watchers would let them down more than I did, and he would ask to have them drawn up into place before the doctor came.

HANNAH RAMSDELL.

EBENEZER SPEAR, *called*. I lived four miles from where Mr. Slack was hurt, and one mile from his house. I watched once at Estabrook's, when he had been there a week, or over. I found him on the machine described, exercised with a good deal of pain, of course. He requested me to loosen the extension. I objected, because I understood the doctor's instructions were, not to do it. He said other watchers had done so, and it seemed to relieve him. I complied with his request. I raised the weight some, and held it in my hand a few moments at a time. Directions were, to wet the leg near the knee. Do not recollect whether I wet his ankles, or not. Mrs. Brigham, Mr. Slack's sister, was taking care of him then. She told me the directions. Can't tell precisely what parts were directed to be wet. I loosened the extension two or three times during the night. There was something between leg and the board it lay upon; impression there was a pillow under, for a part. Have no recollection of a sore on the heel; I saw none. He complained. It was inflamed some around the ankle bone. At the time he was removed I helped. I did not see any sore upon the heel then. Dr. Davis objected, at first, to his being moved. Quite a number of the neighbors went down. He was anxious to go home. Dr. Davis soon came and objected, and went away, some ten or fifteen rods, to Dr. Lewis'. As we had collected, and Mr. Slack was anxious to go, some one went over and importuned him. I understood him as consenting, if we would get a piece of bark. One was obtained and we put it on. Dr. Davis gave as a reason, that he thought the bone had not united enough to be moved. Mr. Slack was urgent to be taken home. I did not see the measurement at Estabrook's; did the one after he got home. My recollection is, that the well limb was then from half to three-quarters of an inch the longest. When I watched at Estabrook's, Mr. Slack took for nourishment cracker in water with a dash of spirits in it. About the same, when I watched with him after he got home.

Dr. Davis was in attendance,—I saw him frequently at Estabrook's and at Mr. Slack's own house; he was said to be the attending physician. I first watched after he got home, a week or ten days after. Not so well off then as when I had last seen him. Some time in the winter, previous to the bringing of this suit, I was making a settlement with Mr. Slack. In the course of the evening he said that he was going to prosecute Dr. Crosby for mismanagement with his limb. I asked him if he employed Dr. Crosby. He said he did not. I told him I thought it would be rather risky, unless he could be very sure he could substantiate the action. He said he meant to sue him, and did. When I watched at Estabrook's, he was relieved by a band above the knee. I saw it on, but did not see it put on. Think there were straps from the band to the foot-board.

Cross examination. Watched with him once at Estabrook's; saw him several times after. It was, I think, a week or ten days after he was hurt that I watched with him first. He then had a pulley suspended over the bed. He was restless. He complained of pain,—of bones aching,—some at the fracture, but more at the feet and ankles. I loosened his gaiters two or three times during the night, and applied a wash. Did not see any sores only some inflammation. Looked as though there might be sores some day. If there had been sores on the ankles I could have seen them. Think the gaiters covered the heels; did not examine them so closely. Think that gaiters had been cut out and did not then cover the ankle bones. Think I could see the instep. Weight of about a pound over a pulley. I raised it a little at a time. Believe there was but one weight; I put my hand under it and raised it. Do not know to which end the foot was attached. Could not say whether the weight was to relieve the foot or produce extension. Held the weight but a short time. There was a cord and pulley, also, from the ceiling for Mr. Slack to relieve the pain by raising the foot. Think one end of the cord was attached to his foot or toe. Don't know as there was any connection between the cord that Mr. Slack held and the one on which the weight was hung. Think both feet were fastened to the foot-board. Always laced them up after they were loosened as before. It did not require great, but some force to get it back again to the foot-board. Don't think I removed the limb out of its place when I laced the gaiters up. Most of the pain was in his well limb. He complained of his feet and ankles some. Did not make an examination of the limb after this, while he

was at Estabrook's. Mrs. Brigham watched with me at Estabrook's. Saw this band above the knee when I watched there, which was the first time I saw him. Band was on when I arrived, and remained on all night. Think the band was only on one leg. Think the straps that attached the gaiters to the foot-board were fastened when I went there, and so remained until I loosened them. I might have loosened the band. I unlaced the gaiters,—can't tell whether both, or but one.

PAUL W. BRIGHAM, *called*. Was about the place of accident. The bank was of clay, marl and sand. Was about half a dozen rods from it. They were doing a job for the town. Mr. Slack was picking with a pick-axe. Mr. Messenger saw it looked dangerous, as if the bank would fall. I was going to speak to him and tell him the bank would fall; he struck one blow and the bank fell and covered him up. Mr. Vesper caughted a shovel, and I think two or three of us rolled off a lump from his head; then shovelled off and pawed into the sand till we came to his hair, and got his head out so he could breathe, and kept at work till he was taken out. We procured a board and laid him on it and carried him into Mr. Estabrook's. I did not watch at Estabrook's. Was there a number of times. At one time while at Estabrook's, Mr. Slack said Dr. Davis had been there, and wanted to know what they had been about. That he told him that his brother had untied the leg and let it down and it was loose two hours. He said the Doctor measured it and said it had shortened,—don't recollect how much. He said the Doctor then got hold of it and pulled it and twisted it and got it back. He said "it wan't one atom shorter, and all he wanted was to hurt me." Was present at the removal of Mr. Slack. Do not know but I might have been at his house and staid one night, but had no care of him. After he arrived home, Dr. Davis measured his limb, and Mr. Slack asked if it had shortened any, and he said the broken limb had a little. The difference was, as I understood, from half an inch to three quarters. After Mr. Slack got out, I was at his house; he related what had occurred that day in conversation between him and Dr. Crosby. He said the Doctor had been there and brought that eagle-eyed Ransom with him, and thought he was going to scare him. Said he did not. He said the Doctor threatened him some about some reports he had thrown out against him, and said he wanted him to keep still. He said he supposed he would have been glad to have him pay him, but said he, "I never employed him and shall never pay him one cent," and said, "if he wanted his pay he might look to Davis for it, or go without it."

Cross examination. Am afraid Mr. Slack and I are not on friendly terms. Did not watch with him. Called in perhaps half a dozen times or more at Estabrook's. Did not work there much afterwards. Think I helped the neighbors finish the job. Taylor Slack was not there at time of the talk related. Slack said Taylor untied the bandage and left it untied two hours, and was telling how much better he slept. Do not know how soon this was after he was hurt. I did not testify in this case before. Was here in court, but was not called upon. Mr. Slack told me that Dr. Davis came in and wanted to know what he had been doing, and he said he told him Taylor had untied the leg and let it remain two hours. He said the doctor measured it and found the limb had shortened some, and got hold of it and twisted it, and brought it back. Did not examine his thigh; did not want to see it. Inferred from what was said, the limb had shortened in moving. Have related all the conversation with Mr. Slack about Dr. Crosby. Have no doubt I have got it correct. He said other things which I cannot relate. There were other things which caused me to remember this. Something was said that if Crosby did not sue him he should sue Crosby; he might have said he should sue him. He said the doctor wanted him to keep still, and not abuse him any more.

JOHN CLOUD, *called.* Saw Slack the next morning after he was hurt, and the Monday and Tuesday after, and watched with him Saturday night; two and a half miles from my house to Estabrook's. Another man watched with me. He complained first of his heels itching, and wanted them scratched. We had to scratch so much that the other man said if I scratched the heel he would take care of him; so I scratched him. He had on gaiters. [Witness showed how they were laced.] The gaiters were tight; did not unlace them that night. Scratched fifteen or twenty minutes and then rested a little. He was not easy only while I was scratching. I scratched all night; it was as much as I wanted to do. Towards morning one of his limbs ached so bad, and he begged so hard, that we took it down. It did not touch the bed before he screamed and begged to have it put back again, and it was put back. It must have been his well leg. A cord was fastened to the gaiter and went up over a pulley which was fastened to the bed-post, or chamber floor; can't tell which. The other watcher gave him what he wanted to eat and drink, some porridge, and, I believe, some cracker*and sling.

Cross examination. Scratched both feet. Had to put my finger

between the heel and garter. Do not know as I tore off the skin. The other watcher did not want to scratch. The foot I let down was laced up. I untied the string that went up overhead. Never been a witness in this case before.

PROF. ALONZO CLARK, *sworn.* Am a physician. Commenced the practice of surgery in 1831; have not had much to do with it since 1841. From 1831 to 1841, surgery was a favorite pursuit of mine. During a part of that time I was house surgeon to the New York Hospital, and surgeon to the Northern Dispensatory. During some years I spent in Europe, my attention was divided between medicine and surgery. While in Europe had opportunities for observation in the hospitals in Paris; was admitted at any hour of the day. Since 1841 have practiced medicine, and have lectured in the College of Physicians and Surgeons in New York, the Medical School in this place, and in the Berkshire Medical Institution at Pittsfield, Mass. I heard Dr. Davis' testimony yesterday upon character of the fracture, and part of Dr. Brown's. I have never seen Gibson's splint used, and can only give a theoretical opinion. But so far as I can judge, from studying the ends for which such an instrument is intended, I cannot but say that it seems to me favorable for such a case as Mr. Slack's is described to have been. There are no rules that govern the profession in the selection of a splint, except those the physician *feels* governed by, when he comes to the case. It is supposed that every surgeon, when called upon, will decide what ends he desires to bring about, according to the nature of the fracture, and it is ruleable for him to select any splint already in use, or to vary, or form a new one for the particular case. If removed too soon from the splint, there is danger of shortening of the limb; and, if at an early period, *great* shortening. In the cases with which I have been familiar, of single fractures of the thigh, high up, considered not safe to take down short of from fifty to sixty days. In a fracture like that of Mr. Slack's, all I need say about it is, that more time would be required. There would be a difference in that respect, also, between fractures caused by the falling of a bank of earth, or other causes. When the soft parts near the fracture are injured, being deprived of the natural supply of blood, healing goes on more slowly. In fractures of the thigh, where muscles are strong and more power is necessary to overcome them, the surgeon expects to have excoriations, sores and ulcers,—that is, until the discovery of *adhesive straps*, for making ex-

tension. In 1845 those straps were not in use. One of the objections to the *double inclined plane* has been, that patient in that splint is at liberty, from twisting of body, to move the bones at the point of fracture. When the well leg is loosened, upon *Gibson's splint*, it gives patient a chance to twist in the same way, which causes the bones to tend to slip by. I am acquainted with Dr. Gibson, both by reputation and personally. His book is of high reputation, and extensively used as a *text book*. It is recommended at this School and the Berkshire School as a *text book* with which the student should be provided. I have ridden with Dr. Gibson, in his visits to his patients, and have seen several cases of fracture in a day under his treatment. Impression, from what I saw, that his private practice was extensive. At the time of my acquaintance, he was surgeon of the Blockley Hospital. Heard him lecture on surgery at the University in Philadelphia. The Hospital with which he was connected was a very large one, containing in patients, of all descriptions, about five hundred.

Q. What is the character of that medical institution?

A. It is rather hard to make a Professor in one school acknowledge that another is superior to his; but I must say that the school with which Dr. Gibson is connected, is generally considered as of the *first standing in this country*.

I am not personally acquainted with Dr. Mussey, only by correspondence. Well understood that he was formerly Professor at Hanover, and he is now Professor of Surgery in the Medical School at Cincinnati. Dr. Mussey is a very distinguished man,—one of the most so in the country.

Dr. George Hayward, of Boston, is in the first rank of prominent surgeons of the country.

Cross examination. Think that Dr. Gibson's splint was first recommended in his *Surgery*, in edition of 1841; I have not been acquainted with it so long.

PROF. HENRY H. CHILDS, *called*. Have been a *doctor* fifty years. Have lectured about thirty years, in medical schools, in Maine, Ohio, the Berkshire Medical Institution, and the one in this place. My practice in surgery, since I have been lecturing, I have relinquished somewhat. Before that, had extensive practice in surgical cases. Should think Gibson's splint as well adapted to Mr. Slack's injury, as represented, as any mode of dressing known at that time. Have been great improvements made since then. No one apparatus is

adapted to all cases. The surgeon is left to his own discretion, upon the circumstances of each case, in the selection of the proper splint. As long ago, I think, as 1836, I treated a case of fractured thigh in Brunswick, Maine. Placed patient on an inclined plane by elevating the foot of the bedstead. This answered very well for a time. We afterwards added additional apparatus. Applied bandages above the knee and fastened a cord to it for the purpose of relieving the foot. Took much pains with it, and got a good cure. It will not answer to relax extension, unless at early stage, in order for a perfect cure. Patient should be kept in splint from sixty to eighty or ninety days,—the length of time will vary in different cases. Think Mr. Slack's a rare case; the contusion was such as to impair the circulation, and render it more difficult to get a good limb. In fractures of this kind, previous to adhesive straps being known, we always expected excoriations and ulcers, more or less, about the heels and ankles, when extension was kept up a sufficient length of time to ensure a good limb. That is a modern and very great improvement. I agree with Dr. Clark as to the high standing of Drs. Gibson, Mussey and Hayward,—there is no doubt about it.

Cross examination. The case I had in 1836 was a simple fracture, pretty high up; no contusion; patient was a young man. Applied extension at first in the usual way by gaiters. Did not change, permanently, at all. Relieved by band at the knee. Changed and relieved as he could bear it. Changed for purpose of relieving the ankle. If we had not done it, might have had excoriations, and might not have been able to keep up extension so as to get a perfect limb. Should at all times have the control of it,—proper, in early stages, to relax occasionally,—but never so but that you can bring it out to its full length. In early stages, some surgeons make no extension at all till inflammation has subsided, and union is expected to commence. Sometimes early extension relieves the patient. Think bony union would commence, in a patient thirty to thirty-five years old, in about fifteen days,—in a young person, in nine or ten days. I took a piece of soft deer-skin and put around above the knee, and extended cord to an object at a point in line with the direction of the thigh. Got a perfect leg,—not much troubled with sores. Should look at the whole case, and see as to sores. If sores likely to accrue, should change point of pressure if we can.

Re-examination. Almost necessarily suffering at heel and ankle,—

heel more particularly,—in such cases. Would require a longer time than usual for union to commence and be completed in such a case as Mr. Slack's. The attending physician, the one who has the case, is the one to see to the patient, and relieve when necessary. Fault in the splint has been obviated by improvements made since. Pressure may be changed and patient relieved in Gibson's splint. Sores produced by force, necessary for the proper extension, being applied constantly at one place. Should think straight splint would produce the same effect as the inclined plane. Think that relieving power might be better applied in the double inclined plane than in the straight splint. Charles Bell's work on Surgery is good authority.

Cross examination of Dr. H. B. Brown, resumed from page 44.— When I made examination the limb was somewhat swollen, but not very badly. I made no further examination. Dr. Crosby made no examination after he came. When Mr. Slack called at my house, I felt of his limb, and told him that he had a bad limb. I did not tell him that it was cruel to put him into such a splint. Object is to get extension, and at same time be most comfortable to the patient. In getting extension, power enough must be applied to overcome the contraction of the muscles. Think it would have been difficult, in this fracture, to get and keep the bones in their proper position in the double inclined plane. Think we get more power in the inclined plane. On double inclined plane, the ankles are confined to the foot-board, but the flexion at the knee prevents the action upon the muscles being the same as in the single. In the double, we should only get power from the ham or knee. I gave my reasons yesterday. I think we get more power, applied the whole length, than if at middle. I have treated fractures of the thigh. Think the greatest shortening was one inch. Had nothing but simple and oblique fractures; no recollection of having a case of double fracture. Have had perfect recoveries,—half an inch to one inch shortening. Have had patients come out with sores and very bad ulcers. It is the duty of attending surgeon to watch the feet and place where power is applied, and relieve patient by change of point of pressure, if possible. Deformity in Mr. Slack's case was, in my opinion, produced in part by the bones sliding by, and in part by curvature of the limb. In fractures of the neck of the thigh bone, there is almost necessarily a shortening. The curvature may have been produced by the bone not having sufficient solidity, at the time Mr. Slack commenced using it.

FREDERICK MARTIN, *called*. Was present at time Mr. Slack was carried home. Heard Dr. Davis say he was not fit to be moved, and that he should object to his being moved. Considerable was said. Mr. Slack was anxious to go home. Dr. Davis went away to Dr. Lewis's. I went away. When I came back, Dr. Davis was there at Estabrook's, and was going to do his best to get him ready to be carried home. And he was carried home. I stopped with Mr. Slack one night at Estabrook's. He made some complaint. I did not do much. Some other person there that did the most. He complained of aching all over,—of his back; complained of laying there so long. Live a mile and a half from Mr. Slack. Have often seen him at work since the injury. He works hard,—performs a good deal of labor.

Cross examination. Should not suppose he could labor as well now as before the injury; I could not.

ENOCH GOVE, *called*. The first time I saw Mr. Slack after he was hurt was five months after his injury; he was in his door-yard with a cane and crutch. My impression is, this was the first of October or last of September. Boarded with him the last of December or first of January after he was hurt. Could not tell what he was engaged about at first; but in the course of my being there he was drawing wood to the village. Think I boarded there nearly three weeks. He loaded part of the wood himself; he went once or twice a day. What makes me remember it is that he got throwed off a load of wood and the sled ran over his foot. Cannot tell how much it injured him; think he went to the village the next day and had a large sock made; think in the course of two or three days he resumed drawing wood. Think he uses ardent spirit occasionally; don't know as he uses it all the time; don't know as I ever saw him the worse for liquor. He is the most stirring man in the neighborhood. Live in sight of his house; he is the first man I see in the morning; and as far as I know, busy through the day.

Cross examination. Live in sight of his house and of his brother's. There might be others up, but he is the first man I generally see. Think he rises first, but don't get a great deal the start of me. Don't know but my neighbor Burnham rises as early as we. Have known Mr. Slack 14 or 15 years. Of course he could do more once than now, but doubt whether you can find any body who will go forward of him now. Have heard him say he could *unhitch* four acres of

grass in a day. My farm was let out and I went to Boston the summer he was hurt. Was at Mr. Slack's in the winter mending sleds. Think he drew his wood from the door. Presume he had help in loading the wood in the morning, but at noon he loaded it himself. Think I am sure it was that winter his foot was run over; cannot say certain.

ORANGE LYMAN, *sworn.* Saw Mr. Slack after he was moved home; live close to him; used to be in most every day; cannot tell how soon I was in after he was carried home. Was once in when Dr. Davis was there. He said there was a curvature of the limb; he wanted to make some adjustment, and requested me to assist him. I took hold of the limb just below the knee; did not apply a great deal of force; directions were to extend the limb; I pulled as he told me. Cannot tell you any more.

Cross examination. Did not discover any alteration, for I made no examination. His ankles were very sore and his heels were quite inflamed; the Doctor poulticed them; matter run out. Watched with him at Estabrook's a week or ten days after he was hurt; when I went in, I inquired about his limb; he said he didn't mind any thing about the limb for his feet and ankles pained him so much worse. He didn't rest much that night; made no examination of his feet or ankles.

EDSON HUTCHINSON, *called.* Live a mile from Mr. Estabrook's; watched with Mr. Slack two nights and part of another while he was there; think the first time was eight or ten days after he was hurt. Watched with him again in about a week from that time; cannot tell when I watched with him the third time, but it was before he was moved. The first time he was restless and complained of his ankles and particularly of his heels; don't recollect as I had any directions then about relieving the ankles; the second time had directions, I think; used friction under the gaiters and administered some wash; don't remember what it was; think the person who handed it to me said there was a little acetate of lead in it. At one time when I watched, there was a band at the knee; the gentleman who watched with me took charge of that. Mr. Slack took nothing for nourishment while I was there but liquid. Think the second time I had directions to give him a little sling. Did not take the garter off, but shoved it up on the ankle; recollect of seeing holes in it; do not know where. Have no recollection of seeing any thing about his foot, could only feel it; he wanted me to rub,—I rubbed his heels, and the first time

felt something like the breaking of a blister. Second time, should judge from feeling that there was a running sore about as large as a half dollar.

Cross examination. Think I was there three times. It was the second time after he was put into the splint that I watched with him. Was not present when he was removed. Saw Dr. Crosby there once, it was the day Mr. Slack was put in the splint; never saw him there at any other time. Saw him ride away from there once, but cannot tell how long afterwards.

SAMUEL K. MARTIN, *sworn.* Called on Mr. Slack whilst at Estabrook's and about three weeks after he was hurt. He said he thought he was getting along as well as could be expected. He felt in good spirits, but complained some. Think I asked him if Dr. Crosby attended him, think he said Dr. Davis attended him. About a year afterwards, (I had been out of the State,) I spoke to him about his lameness. He rather threatened Dr. Davis with a suit if he was worth any thing. I cannot tell exactly what the talk was; but he said there were sores on his heels, and he was lame, and he talked hard of Dr. Davis, and spoke as if he should sue him if he was worth any thing. Had some conversation with him about sueing Dr. Davis. He talked against Dr. Davis, and spoke as though he would maintain a suit against the Doctor if he was worth any thing.

Cross examination. That is the sum and substance of the conversation; would not pretend to word it as he said it.

MRS. LOUISA BRIGHAM, *sworn.* Am sister to Lorenzo Slack. Saw him first after he was hurt on Sunday afternoon; went to attend upon him in about a week afterwards; staid there four days, and Tuesday of next week went back again. Went and staid with him three or four times. When I left, I left him in the care of my sister, Hannah Ramsdell; found her there when I went back. Dr. Davis directed to keep the leg extended, and not to wet the limb; he directed to wash the injured part with vinegar and wormwood, but the feet he did not want wet at all. I used to untie the straps and lacings three or four times a day; think both the lacings and the strap going to the foot-board; did so because he directed it. Wet feet a number of times in a day. He would fret and scold. Dr. Crosby came in with Dr. Davis once while I was there; think it was in the first week I was there. Dr. Davis told Dr. Crosby he could not get his directions followed; he said his friends and watchers let down the extension. Dr.

Crosby replied that if he had been in Dr. Davis' place, he would have left him long ago. This was said in Mr. Slack's hearing. Dr. Crosby said he wouldn't give any advice in the case. He said so because Lorenzo and his friends and watchers acted so. Do not recollect as Drs. Davis and Crosby talked the case over by themselves. The extension was loosened more or less every day while I was there ; Mr. Estabrook used to do it sometimes. Taylor Slack watched one night ; and in the morning Lorenzo told me he took the legs down, and let them be down two hours. Dr. Davis asked Lorenzo the next day what he had been about. He said the limb had shrunk one inch or more. He told him it must be fixed ; he took hold and pulled it, and fixed it. Was present at the time Lorenzo was carried home. Dr. Davis told him he should not give his consent to have him carried ; and told him he was doing well, and he could not be moved with safety.

Cross examination. Testified at the court before. My brother and I are not on so good terms as we ought to be. Think I have testified more now than before. I testified then to all they asked me. Some questions were not put to me before. Think I testified to the conversation between Drs. Crosby and Davis as I have related it here. Had the care of my brother while there. Dr. Davis came every day. Think Dr. Crosby came there the first week I was there. Think I went there Monday or Tuesday. The second time I went, staid two or three days and went away again. Think four or five days was the longest time I staid there at any time. Had the care of him exclusively during the day. Dr. Davis was there every day, and sometimes twice a day. Began to unloosen the feet the first day I was there ; tied them up again ; had no difficulty in tying them back as they were before. Dr. Davis used to fret some because I untied them ; he said I ought not to. Still, I continued to do it. Cannot tell how long I kept them untied ; it was just as Lorenzo told me about that ; never untied them except when he told me to. Did not see Dr. Crosby the first day I was there, it was some time during the week. Dr. Davis told Dr. Crosby he could not get his directions followed. Think Dr. Crosby made no examination ; he went in with Dr. Davis ; presume he staid half an hour. No other sick person at the house. Do not know as I testified at the last trial any thing about the conversation between Drs. Crosby and Davis. I had told Dr. Crosby about that conversation before the other trial. Have had no conversation

with Dr. Crosby about it since other trial. Dr. Crosby told Dr. Davis if he had been in his place he would have left Lorenzo long ago, because himself, his friends and watchers acted so. The day after Taylor watched, Dr. Davis measured the limb and found it had shrunk an inch. Was present when my brother was taken away; went home to his house and got there before he did. There were no sores about his feet, but don't know but there might be about his ankles,—they were red and inflamed on the sides. Saw him the same day after he got home. Think it might have been a week or a fortnight before he had any sores. Did not remain there all the time after he got home, but was there occasionally.

Re-examination. Cannot state positively as to the time when sores appeared.

DIXI CROSBY, (Deft.,) *sworn.* The account given by Dr. Brown is substantially correct, as to the way I was called. I went in and made a general examination of Mr. Slack, and gave as my opinion, that he would not probably live the night out, and that there was no necessity for doing any thing more till morning. I was told that the limb had been set. One inducement, which has not been mentioned, determined me to go. Dr. Davis told me it was his brother-in-law that was injured, and that it would be a great kindness to him, Dr. Davis, if I would go over. I did not then know Mr. Slack. I wrapped up and went. I find, by my day-book, that I had not been out for five days. I remember distinctly that I was not able to sit up all day, and was only temporarily up, when Dr. Brown called upon me. I knew of nothing to be done for Mr. Slack, but to keep him in a comfortable position, till we ascertained whether he lived. As I was leaving the house, Dr. Davis requested me to come over the next day and assist in putting Mr. Slack into the splint. I did go over the next morning, but it was late, and Dr. Davis remarked, "we have been waiting for you some time." Every thing seemed ready for putting him into the splint. I saw that boards had been placed all the way over the cords of the bedstead, to prevent their sagging. Over these boards, which extended the whole length of the bedstead, was a covering composed of several cotton puffs, or comforters; whether a straw bed or not I do not recollect, as this was arranged before I got there. I saw the splint before it was brought into the room. Estabrook said he had made the inclined board longer than was directed in the book, as he thought it would be easier to the patient. I replied to him that I pre-

ferred practice to theory, that I knew nothing about the splint at all, and he had better make it conform to the book. It was altered to conform to the book, as I was informed. The inclined board was then covered, the whole width and length, by folding a covering with padding, to make it soft, of uniform thickness. There were also perpendicular foot-cushions placed as directed in the book. My recollection is distinct upon this point, from the fact that the cushions were in the way whilst passing the strings through the holes in the foot-board. I put the gaiter upon the broken leg, and Dr. Davis upon the other. Dr. Davis held the broken leg. Both legs were placed upon the inclined board, previously having put some of the same padding between the heel and the board. Whilst doing this Dr. Davis became tired and wished to be relieved from his stooping position. I spoke to Mr. Currier, (with whom I was acquainted,) and in a joking way said to him :—"Come, Mr. Currier, you are a stout man and I think you will not tire out." Dr. Davis then stepped around and put the gaiter upon the well leg. After we had got ready to make extension I requested Mr. Currier to take hold of the strings of the gaiter and pull gently at first. Whilst pulling, the gaiter would wrinkle, and I smoothed it. From time to time I directed him to pull more and more upon the broken leg, until drawn up to within about one inch of the foot-cushion. At that time this leg was not drawn out to the same length of the other, in my belief, into about two inches. There was so much escape of blood into the flesh, and the thigh and leg so swollen, and the muscles were so contracted, it did not seem expedient to put on force enough then to draw it up to the foot-board. I infer that the limb was not drawn to its full length, from two facts :—One is, that the leg of a man of Mr. Slack's size is just about three feet long :—the other is, that the foot-cushion was an inch in thickness and the foot did not reach it by about one inch. Whilst I was doing this, Dr. Davis was fixing the other leg, and how much that was pulled I do not know. There was some general conversation as to the treatment of the patient. The injured limb had become highly colored, and from hip bone half way to the knee was black and blue. The skin was a good deal scratched and torn. They pointed out to me where they thought the point of the fractured bone was. I did not examine by feeling of it. It was so swollen I could have ascertained nothing, had I attempted a closer examination. The skin was so full as to shine, and was pressed out to its utmost extent. I left

soon after completing the dressing. Nothing was said to me on Sunday about coming again, that I heard. Mr. Slack did not employ me afterwards to take care of him. I am willing to adopt Dr. Converse's account of our meeting at the bridge. By which of us the conversation was introduced, I cannot say. I inferred from what was said, that Dr. Converse would like to see Mr. Slack. When we met I was riding, he was walking. After a little conversation I said : "If you wish to see Mr. Slack, I will go with you." Dr. Converse has given a correct account of what took place in the house. I had no purpose to go in, if I had not met Dr. Converse. I do not remember that there was a word spoken between us, either there or before, as to the nature of the fracture. I knew nothing as to it, but took it wholly from the account given me by Drs. Davis and Brown. Owing to the condition it was in from the time when I first saw it, it was impossible for me to know any thing about the nature of the fracture. When I left on Sunday, I got no impression, from any thing that was said or done, that I was expected to have any thing further to do with the case. At some time, I do not know when, I was coming down the river north of Mr. Estabrook's, and overtook Dr. Davis. He asked if I was going to stop before I got to Estabrook's. I told him I was not. He asked me to call and see Mr. Slack. When we got to Mr. Estabrook's we went in. He did not tell me for what purpose he wished me to call, except that he wanted me to see Mr. Slack. Dr. Davis told me, in Mr. Slack's presence, how his directions were disregarded and the dressings interfered with. Who else were present I cannot tell. I did not then know any of Mr. Slack's brothers or sisters. When Dr. Davis had told me how the watchers and attendants conducted, he asked my advice about it. I told him I could give him no advice as to how he should conduct with his nurses and watchers. I said further, (in substance,) that my way was, if my directions were not followed and the dressings were interfered with, as represented in Mr. Slack's case, to leave the patient. We have to say, when a patient is confined in any kind of splint, and they take the management into their own hands when the physician is absent, and if they do not submit I am in the habit of saying to patients, "we cannot practice together, and if you cannot follow the directions, I must leave;"— "that we cannot manage the case together, and if you undertake to manage it, I will take myself out of the way." That is the idea I meant to convey. I think my attention was not called to the limb;

Dr. Davis said it was doing well; he asked no advice in regard to treating it, but only in regard to the management of the watchers. Since hearing the testimony of Mrs. Blaisdell I have procured a copy of my account, to see if I was at her house at the time specified. I recollect being at a Mr. Blaisdell's house, who had an abdominal abscess. I have no recollection of having any conversation there about any body's case but Mr. Blaisdell's. When Drs. Brown and Davis called upon me and described the fracture, I gave just such an opinion as any professional man would, upon a case represented by another. I concurred with them upon the case they stated. My opinion then, as they represented Mr. Slack's case to me, was in favor of the splint used, and is still the same.

Cross examination. My impression was that the injury was so serious that Mr. Slack would not survive; I think I said this to Mr. Currier. I had heard something of his condition the next day after the injury, before I went to Mr. Estabrook's house. He had revived so on Sunday morning as to be conscious of existence. My impression was, from his general appearance, that he was not in a situation to exercise reasoning powers. The night before, I think, he was not conscious of existence. Had no conversation with Mr. Slack. Cannot doubt, from the acquaintance between Dr. Davis and myself, but that he mentioned Mr. Slack to me every time he saw me. I presume I may have enquired about him; I hope I did, at any rate, although I recollect no instance. Think it was on Monday, the day after he was put into the splint, when I called with Dr. Converse. I did not do any thing then; do not know that Dr. Converse did. Do not remember who else was there. Did not know that any physician was in attendance. I got there on Sunday about ten, and think I left about the middle of the afternoon. Before I left, on Sunday, have impression that he had consciousness sufficient to know where he was; but not sufficient to take any care for himself, unless to ask for water, or the like. My impression is that I next saw him with Dr. Davis, but cannot say when it was. Either the next day or day but one after I called with Dr. Converse, I was riding by Mr. Estabrook's with my wife, and I said, "here is where the man lies who was crushed by the falling of a bank of earth." She requested to see him and I called with her. Think this was two or three days after he was put in the splint. Do not recollect of seeing him again while at Estabrook's. Do not know any thing about his being removed. Do not

remember as Dr. Davis spoke to me about it. Do not know whom I left with him on Sunday. Do not know whether Dr. Davis had gone away or was there. It would be my impression, from the natural habits of the two men, that I left before Dr. Davis did. So far as it regards treatment of ordinary cases of fracture and dislocations of common kinds, my belief is that Dr. Davis would do all the business in families within his limits; but that he would not be sought for as a surgeon beyond that. If Dr. Davis will trouble himself *to think*, and if he will excuse me for the mode of expression, I had as lief have his opinion upon a question of physic, or surgery, as of any living man among the practitioners in my neighborhood,—or among common practitioners. I have consulted him for myself. I think I have been at Blaisdell's with Dr. Davis more than once. Have no recollection of talking there about Mr. Slack, or any one else. My impression is that our attention would be closely directed to Mr. Blaisdell. His case was a rare one and required a very delicate operation, and I think we should not have been likely to talk about any thing else. I knew nothing about this splint, when it was adopted. I did not say, that I selected this splint from a book in my library.

Re-examination. I produced the books, but believe that they looked them over, and I not. I took the description from Drs. Davis and Brown, and made no examination, and gave as a reason, that it was not possible for me to make any examination in the situation that the patient then was.

(*Defendant here rests.*)

PLAINTIFF'S REBUTTING TESTIMONY.

[The Judge's minutes of Mrs. LOUISA BRIGHAM's testimony, given on the previous trial, were read to the jury.]

JEDEDIAH T. BRIGHAM, *sworn.* Was called about a week after Slack was hurt to watch with him ; watched again in about four days, and once after that,—three times in all. Didn't see him at Estabrook's excepting when I watched. The first time he was restless, and kept me and the one who watched with me very busy rubbing his ankles and trying every means to keep him quiet. The second time he was more nervous, and got no rest at all ; we gave him McMunn's Elixir, but it didn't seem to operate ; he begged several times during the night to have his limbs let down ; towards morning he became so restless, and begged so hard to have the strings loosened, that I did so. In loosening the left leg, I found the instep black and the skin slipped. It looked so bad, the man who watched with me proposed taking off the gaiter ; he took hold of the limb and held it in its place ; I unlaced the gaiter and took it off, and found the heel also black ; it slipped and from it ran watery matter. A silk handkerchief was lying on the bed, and we doubled it up and with it tied the foot to the foot-board. I left it in this manner in the morning ; the gaiter was made of white sheepskin and canvas or tow cloth, two thicknesses—one cloth, the other leather ; don't know but there might be a lining within the gaiter. I noticed in moving the gaiter it wrinkled and the strings buried in the foot. This was the second time I watched with him. The third time he was not so nervous and excited as before, but the ankles and feet were sore, suppuration had taken place. Did not see him again till he was moved home. Was not present when he was moved home. Saw him after he was moved ; cannot be definite as to the time. Saw him Sabbath evening ; went there with Dr. Converse. He seemed very weak and feeble, and if I recollect right there were deep ulcers on both heels and on each side of the ankles of the broken limb and one on the instep ; the other foot was not quite so bad ; think there was a sore on but one side. Do not think I saw him again until

he was able to be out. Some two years or more after I saw his feet ; he was in a shop in the village, and he showed them ; there were running sores on them then.

Cross examination. The leather the gaiter was made of was a piece of skeepskin, such as I used for lining boots. I offered the man who came after it some deerskin. The piece he got was the lining of a boot, it was pretty stiff. I left the gaiters off from half past three until morning, when I left. His foot was kept in place by a handkerchief, the end of which was tied round the foot-board.

RUFUS BENSON, *called.* In 1845, I lived in Norwich. Sometime in the afternoon of the day Slack was injured I was informed of it. I was at the village. I went down the river to see him ; went into the house, saw him. There was but little done at that time. Was there the next morning and some more than half of the day. Was there when he was put into the splint. Don't know as I can tell who had the direction. Drs. Crosby and Davis were there, and one or two more doctors. A short time afterwards,—(Burnham says it was the next Tuesday,)—Mr. Burnham and I watched with Mr. Slack. He complained considerably of his feet and ankles. He said they were drawn down too tight and wanted them loosened. We raised his heels up a little from the board ; didn't loosen him otherways ; cannot tell how soon, but pretty soon I watched with him again. Complained about the same. The second night he complained so much about loosening his feet that I spoke to Dr. Davis about it ; he said it would not do, but I think he said we might loosen the well leg a little ; saw his heels ; think there was a sore on the instep ; no sore on his heel. Called in the morning he was moved, did not stop but a few minutes, and did not assist in removing him ; I was on my way to Springfield ; came back the next day, and the next morning went in to see him. Saw his heels and ankles were sore ; cannot tell when, but one time the cap of the heel was gone. Both heels appeared to be running.

LORENZO SLACK, (Plff.,) *sworn.* The first recollection I had after the injury was on Sunday, in the fore part of the day. Remember of a number of men being there and fixing me up in some kind of a way. Do not remember every one ; do not know as I realized at the time that I was put in the splint. Remember of seeing Drs. Crosby and Davis there. After I was placed on something, I remember of asking Dr. Crosby how long I had got to lay there ; he stated some number of days, cannot say how many, but had it in my mind that it was 35

or 40 days. When he gave me the answer, I spoke and said, "May I begin to count to-day?" He said, "Yes," then he left. Some of them laughed. That night my wife watched with me. Cannot say but I was wandering a considerable of the time; thought there were trees across me, and would ask them a lot of odd questions, and they would laugh at me and tell me I didn't know any thing. Didn't see Dr. Crosby again till Tuesday or Wednesday; Crosby and Converse came in and went to the bed where I was and looked at me, and Dr. Crosby asked Dr. Converse what he thought of the splint. If I remember rightly, Dr. Converse replied that he did not know but it might do if the patient could stand it. Think the fracture was pointed out: think it was called a simple oblique fracture. Always supposed that was it. Presume I began to complain as soon as Monday. I felt as though I could not live in that position, and begged of them to liberate me some way, and asked them why I could not have the use of the well leg. Dr. Davis told me Dr. Crosby said it must not be altered. Did not see Dr. Crosby again until about a week after he and Dr. Converse were there. He was in then, and I told him then my suffering was greater than I could bear, and I asked if there was not some way that I could be liberated. He turned up his head and said that I made a great fuss for a man with nothing but a stub in his toe. I told him I was in great pain in my heels, ankles and back, and I think at that time they got some cotton batting and put under my heels, and I think tucked some under my back. My pain and trouble grew worse and worse, and I should think it was as late as three weeks before I saw Dr. Crosby again. About that time there was an extreme pain in my well leg. I think the night before my brother George and Daniel Currier watched with me. All the way they could relieve me was to heat cloths and a freestone and hold them upon the thigh of the well leg. They continued this through the night. All the trouble was in the well leg. Think Dr. Davis came the next morning, and I asked him why I could not have that leg taken down. He said it would not do, for Dr. Crosby said it must not be moved. Think the same or the next day Drs. Davis and Crosby came in, and I think they took the leg down while Dr. Crosby was there. As soon as they took it off it seemed to put me in still worse pain, and I think I asked them to put it back. I had no power over it myself. They put it back. It had been up, I think, twenty days. Afterwards, up part of the time and down a part. After that, pain was principally in feet

and ankles. Cannot say I ever realized any pain about the fracture while at Estabrook's. I never saw the sores on my heels while there, could only feel them. After they got the well leg off the splint I could see the ankle bone. Before I was moved there was a large sore on instep of left foot. When I got home they were awful things,—running sores on both heels, ankles and insteps. The skin did not come off till after I moved home. The night after I was moved home my brother David watched, and he took the thick skin off my heel, and the first time I saw the heel was in a looking-glass that was held for me. I would lay my feet over the bed and there would drop off half a pint of fluid every night. I thought I was nearly gone the day I went home, and I thought others thought so too. I felt as well the day I went home as I do now; I felt cheerful to think I could go home. I gradually improved; my sores grew bigger until June; don't think I suffered so much pain, though my sores grew worse, as I did at Estabrook's. The winter after the injury I did not do scarcely any thing but ride around and see to chores. I had a span of horses, and by having the wood loaded for me I could get on the load and ride to the plain. I drawed wood in this way the second winter after I was hurt. I think two years ago last winter I was thrown off the sled and it run over the toe of my right foot. I got a sock made and wore it I think two days. This was not the next winter after I was hurt. Cannot say as I have been free from pain since my injury. Have not rested that heel on a feather bed since; cannot bear its weight upon it. I do considerable work now, but I do it in misery; don't think I can do more than one-third the work I could before I was injured. The facts that led to suppose that Dr. Crosby had the care of me, were, that Sunday he told me the number of days I must lay on the splint, and then as he went out of the door I spoke to him and said, "you will call and see me again when you are over?" or, "when are you coming over again, doctor?" or something like that, "to see me?" He gave me an answer that he would be over again; he said he would be over very soon; cannot recollect the words he used; but supposed he was coming again. Then when he came in with Dr. Converse, I showed him my leg, and they talked about it, and coming with Davis and what Davis said, and all, I supposed he was the attending physician. I never had any such conversation as related by Paul W. Brigham. Never told Mr. Spear or any other man that I did not employ Dr. Crosby. I never told Freeman that I did not employ

Dr. Crosby. I recollect the conversation I had with Mr. Freeman. Should think it was in October after I was about; I was at the Plain at an auction, was standing close to Morton Lewis when Mr. Freeman presented a bill from Dr. Crosby for doctoring me; likely enough I started up pretty quick and said to him, "I shan't pay any bill to Dr. Crosby till I pay it on the tail end of an execution. He ought to pay me for making me a cripple, and tell him I stay up where he and General Ransom saw me." Suppose the injured limb is strong three inches shorter than the other; am very much incommoded in travelling. The hip joint is good enough. The ankle seems somewhat stiff and troubles me some.

Cross examination. I remember, sometime, Spear and wife being at my house. Think Mr. Burnham was there the same night. Never said in the presence of Mr. Spear and wife that I didn't employ Dr. Crosby. Remember talking about Ransom and the doctor coming to my house. Perhaps I said something about Dr. Crosby's sending a bill to collect by Mr. Freeman. I remember of talking about it either before or after the suit. Never said in presence of Mr. Spear anything about not employing Dr. Crosby.

DEFENDANT'S REBUTTING TESTIMONY.

DR. CROSBY, (defendant,) *re-called*. I have no recollection of having any conversation with Mr. Slack at Estabrook's about going there again. Think I should have gone if requested, for it is my habit and business to attend patients when asked so to do.

NOTE.—During the trial a reporter was employed, who furnished a hasty report of the case for the *Spirit of the Age*. This report has been revised and corrected by notes taken by counsel on the trial, and, so far as I know and believe, is a true and faithful copy.

D. C.

CHARGE OF JUDGE PIERPOINT.

In the action of Lorenzo Slack against Dixi Crosby, for mal-practice, the plaintiff alleges in the declaration, that defendant on the 12th of April 1845, was employed by him, who was then suffering from a fracture of the thigh bone, to set, dress and take care of the injury; and that defendant undertook to adjust this fracture and take care of it. And in the care and management of that fracture the plaintiff alleges that the defendant managed it so carelessly and negligently that he has suffered damage. This action is an action on the case. It is not an action on a contract, although the declaration alleges what the law would make a contract so far as to permit the defendant to recover for his services; still the action is not for a breach of this contract, it is not for the defendant's not doing what he agreed to do, but for doing what he did agree to do in such a careless, unskilful and negligent manner as to injure the plaintiff. The plaintiff introduced, in the first place, the testimony of several witnesses, testifying, in substance, that he, on the 12th day of April, 1845, was engaged in excavating a bank of earth, which fell upon him; that several persons in sight, seeing the situation in which he was placed, uncovered him and removed him from the bank; that he was much injured, and supposed to be dead, and taken to the house of Mr. Estabrook; that a messenger was despatched to Dr. Crosby, who lived about half a mile from the place where this accident occurred; that the messenger called on Dr. Crosby, stated to him what had happened, and requested him to go and see the plaintiff; the defendant said he was unwell and unable to go, but observed to the messenger that Dr. Brown was there and would go,—the messenger says he did not recollect whether he saw Dr. Brown or not, but Dr. Brown says he asked him if he would go, and he told him he would,—Dr. Brown went to the house of Mr. Estabrook. The plaintiff was then lying

on the floor. Dr. Brown made preparations for placing him on a bed, when Dr. Davis went in. They then laid the plaintiff on the bed. Dr. Brown states that in moving him he placed his hands under the fracture, and from indications, he concluded the bone was crushed, but after he was placed on the bed he examined the fracture and satisfied himself that the bone was not crushed, but that there was an oblique fracture of the thigh bone very near the upper joint, and another fracture near the neck of the bone. Dr. Davis examined it also, and satisfied himself it was a double fracture. Both state that the parts of the thigh were very much lacerated; that the point of the fractured bone protruded nearly to the skin; that the blood had collected, causing a considerable of a tumor at that point; and that upon consultation together, having no dressings to apply to it, they concluded to consult with the defendant. They went over and stated to him the case, and inquired of him whether he had any suitable dressings. He said he had not. The question then rose between the three, what dressing should be applied? Dr. Brown says the splint with which he had been acquainted was the straight or horizontal splint. He says that it was concluded at once that that splint could not be applied to this patient. He gave as a reason that the splint would come in contact with the tumor. Then the question was as to the double inclined plane. He states the reason that in his opinion, and the opinion expressed at the time by the defendant, to make the extension, short splints and bandages must be used to confine the thigh to the splint, and that, of course, would preclude all appliances to the cure of the laceration of the thigh. And another reason he assigns is, that the fractured bone which was attached to the hip joint was so short it would be difficult to keep the patient from moving it if he had the use of the other limb. The defendant took down his book, and they examined them, and finally concluded to use Gibson's splint; they all thought this was the best.

One thing, gentlemen of the jury, of which the plaintiff complains is, that the defendant in the application of this splint did not bring to bear upon this case that degree of skill, judgment and prudence the law requires when placed in the circumstances in which he was placed. This question may be the first which may be presented to your consideration: What degree of skill was required of the defendant? What the law requires of any man is that he should use ordinary care in the application of his skill in the subject matter of

business in which he is engaged. The highest degree of skill is not required, though a higher degree of skill is required of the defendant than of a graduate of a medical college. He has no business to commence practice until he has acquired that ordinary degree of skill, and he must use ordinary care as well as the defendant. If the highest degree of skill was required, no man would be safe in the practice of surgery; for we all know in relation to surgery that the greatest part of the skill required is gained by practice. And with all surgeons the more practice they have had the more skill they have, because there are no two cases exactly alike. Was there any thing unskilful in adopting this splint as the one best calculated to effect a cure in this case? The physician or surgeon has no business to experiment upon his patient merely for the sake of making experiments; but the question arises in this case, what you would require of the surgeon under the circumstances. The splints then in use, as Dr. Brown then thought, would not answer the purpose; they then sought information from an approved author, to see what splint might be applicable to this particular case. They found and approved of Gibson's splint. What would you have them done if they had found no splint? They must either let the patient lie as he was, or produce some extension of the limb. If that instrument in the estimation of every man of ordinary skill was calculated to produce the ends desired, should you say that the surgeon should not use it, and be liable for mal-practice simply because it was new? But if he makes use of a strange instrument that never had been used, or was not calculated to produce the results desired, that would be different. The question would be, what under the circumstances would this man do? They adopted this splint and got one made, and Dr. Davis and Dr. Brown persuaded the defendant to go and look at the patient. Dr. Davis carried the book over and got the splint made, and the defendant states when he got ready to leave, his impression was he expressed an opinion that Mr. Slack would not live through the night, and Dr. Davis, as he said, asked him if he would not come over and assist in putting the plaintiff in the splint. He told him he would, and the next day went over. After having assisted in placing the plaintiff in the splint, the defendant left, and, as is contended on the part of the defendant, that when he left at that time, his connection with that patient ceased, and he was under no obligation from that time to have any care of the patient, and in fact that he did not. The plaintiff states that his recollection

of what took place during that time was indistinct, but he recollects that after he was put in the splint he asked the defendant how long he should have to remain there ; he told him, but he did not recollect the number of days, and that as the defendant left he asked him to call again, and he said he would. The defendant said the plaintiff was apparently unconscious, part of the time, of what was passing around him.

It will not be contended that the plaintiff had anything to do with the procuration of the defendant ; if he went both times by the request of Dr. Davis, and if he went merely for the purpose of acting with Dr. Davis, and if he left with no direction on his part to call again, his connection with the patient would cease and he be under no obligation to return. But, in point of fact, although he had agreed on that occasion to continue his attendance, if he had abandoned the patient, he could be liable only on his contract, he could not be liable to mismanagement of the patient. And if the plaintiff had relied upon that agreement it must not answer for him to suffer himself to lie there and suffer injury for the want of proper medical attendance ; it would be his duty to call on some other surgeon, if the defendant did not go. But unless he understood at the time, that he was to have the care of the patient, there, gentlemen of the jury, his obligations would cease, and he would not be liable for mal-practice unless he did something for the patient or performed what he did do in some negligent manner. Then the question is, if you find this relation ceased on that Sunday morning, then the defendant would not be liable for treatment afterwards by Dr. Davis or any one else. The defendant is responsible for his own acts and negligence, and for that alone. Then the question arises, and it is for your determination, whether the defendant was guilty of acting unskillfully, negligently and carelessly in the management of this fracture, in the application of this splint. And it is for you to determine whether there was any want of skill or judgment on his part. And if he used this skill, and in his best judgment thought the appliance was the best under the circumstances, it is all we shall require of him. As I said before, the surgeon must not try experiments for the sake of experiment, but if he makes use of means which in his judgment are calculated to meet the ends desired, it is saying too much to say he is liable for the consequences, even though they might be disastrous. If you are satisfied that he used his best judgment in the use of the instrument,

and if his connection with the patient ceased on that Sunday, then there is no ground to say he was liable for any consequences of this injury. It is no matter whether the plaintiff was in a conscious situation at the time, if any one else in his behalf had called on the defendant to perform his services, he must bring to that service the ordinary skill and care; and if he is wanting in that he is liable for the consequences the same as a man in any other business, who does his work unskilfully. But it is contended on the part of the plaintiff that the defendant did treat the patient, and did manage the case, and did it in a careless manner. You have heard the witnesses on both sides.

The defendant testifies that he did not call there afterwards to have any care at all, was never requested by plaintiff to do anything for him afterwards, and though the plaintiff says he believes the defendant directed about the case, still he does not tell us he had any care or gave any directions, or that he sent to him for relief. Dr. Davis says he directed. Unless this patient was under the care of Dr. Crosby, he would not be responsible for the acts of Dr. Davis; he is only responsible for what he does himself. It is contended on the part of the plaintiff that the defendant made some five or six visits after the first Sunday. You have heard of the circumstances under which these visits were made; of the conversation with Dr. Converse on Monday or Tuesday after the plaintiff was placed in the splint, and that he and the defendant went in. He states what took place on that day. Also the defendant says he called once with his wife, and states the circumstances by which he did call. Dr. Davis says on one occasion he requested the defendant to go in with him. The reason he assigns for it was that the plaintiff was uneasy and restless. Whether this was the same occasion, related by Mrs. Brigham and Dr. Davis, is for you to say. The defendant says it was the same occasion, the plaintiff says that it was not. Dr. Davis says that it was two or three weeks after the injury. The defendant does not recollect the time. Mrs. Brigham says the time Drs. Davis and Crosby called there was the second week after the Sunday the plaintiff was placed on the splint. You must determine the nature of the acts of the parties as well as what they said. If the defendant was to have the care of this patient, of course he would not deny it; and if the plaintiff supposed the defendant had any obligation to him, it is for you to see if he would remain passive without the attendance of the

defendant. Dr. Davis was there sometimes three times a day, directing about the management of the apparatus and the treatment of the patient. Then the question arises, whether there was any fault on either party. If you find from the evidence that the defendant was in actual attendance to this patient, and had the control, direction and management of him, then the question arises, whether, through his mismanagement the injury has accrued of which the plaintiff complains. He complains of a splint, made of a certain construction. If he could not safely be placed in the double inclined plane or straight splint, the question arises, what splint should he be placed in, and whether there was anything in this splint that did, in point of fact, injure the plaintiff? If sores were produced, it is for you to determine what there was in the construction of this splint calculated to produce them, more than in the two other splints. The inventor, Dr. Gibson, in his deposition gives the reason for preferring this splint in particular cases; and one reason is the very thing of which the plaintiff complains, and that is the elevation of the feet, that the pain would be less in consequence of the elevation. All we know of that is what physicians tell us. And we do not know as surgeons have ever discovered a position in which a limb can be placed and kept without making it very painful; if they could they would deserve the thanks of the world. They tell us a great deal of pain must be endured, by the patient; that if he expects to have a good limb it must be kept extended until the bone becomes firmly united; that this is absolutely necessary for making a perfect cure. It is apparent that this cannot be done without great pain, for surgeons tell us the patient should remain in the splint from 60 to 70 days. And Dr. Childs tells you that the wetting of the heel will so affect, that unless great pains are taken, sores will appear on the extremities. It is for you to say how much difference there would be in the force which it is necessary to apply, between this splint and the others. The question is, should the surgeon on this occasion have used this splint. The defendant contends that the soreness has been increased very much by the continual wetting of the parts, and the surgeons, who were asked the question, said the tenderness would be increased thereby. Dr. Davis directed that these parts must not be wet all. The defendant contends that up to the time the plaintiff was removed, this limb was in a good condition, and that it was as free from sores as could be expected, under all circumstances. If you are not satisfied the defendant had the care

of this patient after he left him on Sunday, after he was put in the splint, then you are not to make him responsible for treatment afterwards, and if you are satisfied that in the discharge of the duty that devolved upon him, at the time he was there on Saturday and Sunday, in the treatment of this patient, he did not exercise that ordinary skill, care and prudence, then you will make him liable to all damages resulting in consequence of that want of skill. But if the damage has not resulted from that want of skill, he is not liable for it; he should not be made liable for it unless that injury has been the result of his carelessness or negligence; and if he exercised the ordinary care and skill in the exercise of his best judgment, in good faith, in making the application to the plaintiff on that occasion, the plaintiff has no cause of action against him. And if the plaintiff has suffered injury from some other cause, no matter whether it resulted from the original injury sustained, the defendant is not responsible.

The case was committed to the jury at 8 o'clock, P. M.,—they separated at 9 o'clock, P. M.,—and the next morning returned their verdict for the defendant.

